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PRIVATE CORPORATIONS FROM THE POINT OF VIEW OF POLITICAL SCIENCE.

ANY intelligent inquiry into the relations of private corporate life to the fundamental principles of political science requires at the outset some idea, however rude and tentative, of what a private corporation is, from that point of view. In the prejudice of the masses, it is some alien monster, that has nothing in common with the people and lives upon the sacrifices which it imposes upon them — some Juggernaut, that mercilessly crushes the people to earth under the wheels of his terrible chariot — some Moloch, in whose fiery embrace men, women and children are ruthlessly consumed. In the mind of the better educated, it is commonly conceived of as a fictitious being, without soul or heart or blood — a being of cold and crafty intellect, inordinate ambition and unlimited selfishness. But all such prejudices and notions are crude, superficial and harmful. A private business corporation is, from the point of view of political science, a group of human beings, usually belonging to the best class of citizens, associated for the prosecution of some great enterprise and endowed with certain privileges and obligations. This is, I contend, the view of common sense and of sound political philosophy as to the nature of private business corporations ; and the law courts are beginning to manifest a tendency to make this conception the basis of their decisions — to make legal theory harmonize with political theory on this basis. They should have taken this

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position long ago, not only for the sake of consistency in their decisions, but because the fiction theory to which they have clung tends to create a false impression, both of the nature of the thing and of its relations in every direction.

The chief privileges which these corporate associations usually enjoy are, continuity of existence despite changes in their individual membership, limited liability of the individual members, and the power to do business by majority act and majority representation.

With this rough and general concept of the nature and privileges of private corporations, we may, without inquiry at this point into the question of their obligations, proceed at once to consider their relations to the principles of a sound political science. Modern political science is a body of knowledge which is grouped about, and classified under, three fundamental doctrines: first, the theory and fact of sovereignty; second, the theory and fact of government; and, third, the theory and fact of liberty. Our question is, therefore, how the existence and activity of private corporations affect these theories and these facts.

In every modern political system there is, in theory, an original and ultimate power, which is the basis of all authority and of all liberty. It is called the sovereignty of the people, or of the nation, or of the state; but, in fact, this sovereignty is nowhere so fully, distinctly and independently organized as to exercise uniform and complete control over government. Almost everywhere sovereignty is legally organized either in the government, or in part of the government, or partly in the government, or makes use of the personnel or a part of the personnel of the government to construct a separate organization of its own. The people themselves are, in large states, unable to exercise their sovereignty over government directly, continuously and effectively. These facts may be easily established by a little study of the provisions and the practice as to amendment in the present political constitutions of the great states of the world. The tendency, in almost all of these states, is towards the assumption or acquirement of sovereignty by the govern-

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ment. The individual citizen or subject is, in his isolation, powerless successfully to obstruct this tendency. The fact is that the political science of the modern world is still engaged in the task of working out the distinctions between sovereignty and government, and that political practice is in the transition period between the sovereignty of the government and the sovereignty of the people behind the government.

In such an era and under such conditions, associations of individuals, both for social and for economic purposes, are absolutely necessary in order to prevent government from assuming sovereignty and lapsing into despotism. Among all of these associations the private business corporation is the most effective. Government is far more likely to assert unlimited power over property than over life or personal liberty. On account of its economic *purpose* the private corporation is as natural a defender of property against the encroachments of the government as is the individual man himself; and on account of its *power*, it is a far more effective defender than the individual man. Every lawyer knows that a very large part, if not the larger part, of the immunities of property, or rather the immunities of men in respect to property, against the powers of government, have been established through the resistance of private corporations to governmental encroachments.

On the other hand, it is not only conceivable that private corporations may become dangerous to sovereignty, but it is a fact that something like private corporations did much to produce the anarchy of the Middle Ages. If associations, whether corporate or not, prosecute their interests through political means, — that is, undertake to get possession of the government, for the purpose of exercising force in behalf of their several economic interests, — they are then certainly threatening the sovereignty of the people. Danger from this source, to become real, however, would require such a consolidation or federalization of associations as would practically unite something like a majority of the political people in behalf of the economic interests of the combination — a situation which is practically impossible under modern conditions, unless pro-

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duced, directly or indirectly, by government itself. Again, if associations, whether corporate or not, combine to resist the powers of government and of sovereignty, and undertake to acquire, by physical resistance, immunities not accorded them by the constitution of the state, they certainly array themselves against the sovereignty of the people; but the success of any such movement is a possibility which may be practically disregarded under modern conditions, if the government only holds itself free from collusion.

On the whole, as things now stand in the modern states of the world, economic organizations, especially private corporations, are helpful in maintaining the sovereignty of the people against the almost inevitable tendencies of government to break over the limitations of the constitutions, placed upon government by the sovereign people in behalf of personal liberty and the security of property. The day has altogether passed when such combinations may, of themselves, become a real danger to sovereignty. The power of taxation, now firmly established over corporate property, is amply sufficient to overcome every hostile menace. Modern political science, therefore, regards with disapproval the political party organization of society upon the basis of the economic groups and combinations into which society may be divided, as tending to make economic interests the sole purpose of sovereignty and to obscure the principles of justice and morality; on the other hand, political science sees great advantage to popular sovereignty in the existence of such economic groups and combinations, so long as they confine themselves to their proper business pursuits, and offer, through regular constitutional means, those same obstructions to governmental encroachment upon the security of private property, which are the chief objects of constitutional limitations upon governmental power.

From the point of view of government, private corporations must be distinguished under two general classes. The one class comprehends every corporation engaged in a business, which, either wholly or in part, is naturally a governmental function, or is actually a governmental function according to the politi-

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cal system of the country in which the corporation exists. The other class comprehends corporations engaged in enterprises that are neither naturally nor actually governmental functions.

Considering this latter class first, we have only to say that, if government confers upon them any privilege above what is enjoyed by ordinary citizens in like pursuits, sound political science asserts the right and the duty of government to see that such privilege is not abused, to the injury of the public. Any failure to perform this duty will allow the power of the people for the support of the government to be diminished. For example, when the government confers upon a number of people, uniting themselves in corporate capacity, the privilege of limited liability, sound political science ascribes to the government the duty of seeing that the capital stock is all paid in and that it remains the corporate property. Again, when the government confers upon a number of persons, forming a corporate body, the power to do business by the will of a quorum and majority of them, sound political science requires the government to insure that the majority shall not so abuse this power as to deprive the individuals who happen to constitute the minority of any of their civil or political rights, as guaranteed to them by the constitution and laws of the country. Or, finally, when the government confers upon a corporate body the privilege of continued existence, regardless of change in personal membership, and thereby contributes towards making the body of shareholders a shifting body, the members of which will become largely unknown to each other and hence largely incapacitated from exercising any effective control over the officials of the corporate body, sound political science requires that government shall so control the relations between the officials and the rest of the shareholders as effectively to preserve and enforce the trust existing between them. If government does not exercise such powers and discharge such duties, it is easy to see how, through the device of the corporate organization, the few may despoil the many, and thus weaken the basis of popular government, if not of all forms of government.

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But it is the corporations belonging to the other class that demand the more extended examination. These are the corporations whose pursuits are, either naturally or by the political system of the country in which they exist, governmental functions, either wholly or in part. Instead of exercising these functions through its own officials, government permits them to be exercised by private corporations. The reasons for such a policy are various and cogent. One of them, as distinctly stated by the Supreme Court of the United States in the noted Slaughter House cases, is that the interested vigilance of a private corporation is often more efficacious than the ordinary efforts of the officers of the law. Another reason is that through the employment of private corporations government may enlist private enterprise and private money, almost without limit, in the accomplishment of vast projects for the public good — projects which would be long delayed, if undertaken at all, should their accomplishment depend upon the means which government could command through taxation or loans. Another very cogent reason, from the point of view of political science, is that, through the management of private corporations engaged in such pursuits, most efficient education and experience in the science and practice of administration are acquired by a large number of private persons, from whose ranks the high officials of government may be taken. The country following such a policy is enabled to develop administrative talent and to hold it in readiness for official employment, thus escaping the necessity of recourse to bureaucratic discipline and the cultivation of the bureaucratic spirit.

Over this class of corporations sound political science demands, of course, a larger control by government than over the other class. In addition to those elements of supervision above mentioned, government must impose duties and restrictions corresponding to the additional powers and privileges bestowed. If government allows corporations to exercise the power of eminent domain, government must see to it that they take private property only for public purposes; that they pay a just compensation for it; and that all the machinery for con-

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demnation, for ascertaining value and for securing the payment of the award shall be so constructed and employed as to preserve justice and the due process of law. If government allows them to engage in public business, *i.e.*, business which government itself has a right to carry on according to the existing political system of the country concerned, then government must see to it that they serve the public without discrimination. If government permits them to fix their own tariffs of charges, government must see to it that opportunity for effective competition is maintained. And if government confers upon them severally the rights of monopoly — that is, confers upon each of them the sole power to do a certain business within a given district and to prevent competition in that business within that district, then government must itself fix the maximum rate of charges.'

So much, as to government's power, is clear from the point of view of political science ; but the law of this country has already gone much beyond this. Not only does it sustain the widest governmental regulation of private corporations engaged in enterprises which, according to the political system of the country, government itself may carry on ; but, according to the rule laid down in the noted case of Munn *vs.* Illinois by the Supreme Court of the United States, when any property is used in a manner to make it of public consequence, and to affect the community at large, it becomes clothed with a public interest, and must submit to control by the public for the common good. Upon this rule was based the decision that in this country the state legislatures have the power (1) to declare that any business which affects the community at large is clothed with a public interest, no matter whether or not government has put any money in it, or conferred any power on it ; and (2) to regulate such business, even to the point of fixing finally and without appeal the maximum tariff of charges which those engaged in such business may demand.

It was realized within a few years, however, that this decision attributed to the state legislatures the power to confiscate

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the property of private corporations, especially such as were engaged in public or quasi-public pursuits, and that some of the legislatures were making good progress in that direction. In consequence of these experiences, the Supreme Court of the United States, by a series of decisions beginning with the case of the Chicago, Milwaukee & St. Paul R. R. Co. *vs.* Minnesota, so modified its earlier decision as to assert the power of the court to determine whether maximum rates fixed by a state legislature were reasonable or not, and to nullify them if, in its opinion, they were unreasonable.

From the point of view of the principles of political science, such complete control by government over private corporations is justifiable only on the principle that they are monopolies — that is, that they are furnished by government with powers to exclude competition. But in the recent Trans-Missouri Traffic Association case, it was decided by the Supreme Court that, while the state legislatures may deal with private corporations as monopolies and fix their maximum charges, Congress may, in all cases affecting interstate business, pass valid laws maintaining competition and forbidding any agreements between such corporations for the purpose of maintaining rates. Presumably the court would hold the same opinion in regard to the power of the state legislatures as to all internal business. It is now, therefore, the law of this country that government may not only fix the maximum tariff of charges for such corporations, but may also maintain competition between them, to any extreme it pleases.

In such a condition of the public law of the country, only the disposition on the part of the legislators is necessary in order to destroy the property of such corporations. It cannot be said that this disposition is wanting: apparently, it exists in great force. How much of it is feigned, and how much is real, it is impossible to know. But we do know that, in spite of our written constitutions and of all our judicial guaranties of property, the legislatures at last have their hands upon the throats of the corporations, and threaten the virtual confiscation of the vast properties in which hundreds of thousands of

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our best citizens are interested. We do know that behind the legislatures are the party organizations, under the control of the chairmen of national, state and county committees, who are virtually without responsibility to any one, and who must procure, in some way, the means to keep their machines in repair and in operation. And we all believe, if we do not know, that these politicians understand, far better than we do, just when and where to put on the screws with the best result. In such a situation of affairs the corruption of government and party management is simply inevitable. The cause of it is not so much the cupidity of the corporations, as the unlimited power of the legislatures to do what they will with corporate property, and the unlimited power of the politicians to make the corporations pay continuously for their very existence.

Such is the labyrinth of difficulties which we have created for ourselves by allowing the different branches of government, and sometimes the same branch, to work at cross purposes, in endeavoring to solve the problem of the relations of government to the corporations. It is not easy to see the way out. In general, three possible ways of escape may be suggested. We may treat these corporations as monopolies and, while government fixes their maximum tariffs of charges, may allow them to exclude competition, so far as they can, by extension, contracts and agreements; or government may maintain the opportunity for effective competition and allow the corporations to fix their own tariffs of charges; or in some way a liberal maximum may be guaranteed to them and reasonable agreements allowed for regulating rates thereunder. Unless we can bring the law of the land into line with one or the other of these courses, I expect, though no longer a young man, to live to see the day when at least every corporation engaged in the vast transportation interests of this country shall be bankrupt, every legislature in the land a body of venal hirelings, and every party management a gang of blackmailers; while the courts, to which we have been accustomed to look for protection against unconstitutional laws, will be bullied and intimidated until they yield in all important things to legislative encroach-

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ments. Then we shall all be found ready, willing and eager that government shall take these vast properties at its own price and operate them by its own officials. The era of the socialistic republic will have arrived. The much-ridiculed Populists understand the present drift of things far more clearly than is generally supposed; and, whenever they observe any effort to change this drift, they are always in evidence to paralyze it. In fact, there has lately been ground for the conviction that the Populists are the only party among us who know exactly what they want and how to attain it. If the present attitude of the legislatures and the courts towards corporations is not playing into their hands, it is hard to see how this could be done.

It is from the point of view of liberty, finally, that the word which modern political science has to say in reference to corporations is most important — especially in reference to those corporations which do the work that government would otherwise be obliged to do. What we mean by liberty in political science is absence of government in a given sphere of individual or social action. We do not mean the rights of individuals as against each other — the great problem of private law; nor the freedom from sin and error involved in voluntary obedience to perfect law — the great problem of ethics: we mean, simply, immunity from the power of government.

Keeping this meaning of liberty in our minds, it is easy to see how corporations are a great stay against paternalism in government. Except for railroad, steamship and telegraph corporations, government would be obliged to own and operate all the great means of transportation and intercourse. Except for banking corporations, government would be obliged to own and operate all the great means for mediating exchange. Except for educational corporations, government would be obliged to own and operate universities and colleges. Except for art corporations, government would be obliged to own and manage academies, museums and collections. Except for eleemosynary corporations, government would be obliged to furnish the means for and administer charities. And, except for ecclesiastical corporations, government would be obliged to have religious

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establishments. All of these things we must have, so long as we are civilized and progressive men; and if we do not provide and manage them by private enterprise through the medium of corporations, government must and will occupy the ground.

Now, does modern political science favor this latter solution of this mighty problem? I do not think that it does: in fact, I feel very sure that it does not. If it did, it would not be distinguishable from the political systems of the period just preceding the revolutions of the seventeenth and eighteenth centuries. In other words, if it did, the principles of popular government would be indistinguishable from those of absolutism. Modern political science favors the greatest possible limitation of governmental power, consistent with the sovereignty of the state, the unity, independence and security of the country, the enforcement of the laws and the maintenance of justice. It favors keeping open to private enterprise the widest possible domain of business. And it absolutely demands that all institutions, through which new truth is discovered and the ideals of advancing civilization are brought to light and moulded into forms for application, shall be so far free from governmental action as to secure and preserve, at least, perfect freedom of scientific thought and expression. In a word, modern political science is very suspicious of state socialism, as it is called.[1] Political science requires, moreover, that when government assumes any business previously pursued through the means and methods of private enterprise, government shall be obliged to show, first, that it has the authority to do so under the existing political system, and, second, that the welfare of the people will be subserved in higher degree by governmental than by private management. In all such cases, modern political science throws the burden of proof upon government, and will not yield to the mere demand of government for the experiment, without conclusive evidence of the harmfulness of the existing conditions, and of the truth of the proposition that no

[1] "Governmental socialism" is the better term, and I recommend to the economists the adoption of this nomenclature. It would deliver them from a good deal of difficulty in their reasoning.

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other substitutes than the agencies of government can meet and rectify those conditions.

Of all forms of government, the federal republic is most hostile in principle to governmental socialism, and least likely to survive any extended development in that direction. The very essence of the federal republic is limitation of government, both as to the subject-matters upon which it may employ its powers, and as to the manner and degree in which it may exercise them. *Any* increase of such subjects and *any* removal of the limitations upon the manner and the degree of the exercise of powers are to be regarded as a menace to the principle of the federal republic; and, consequently, any radical movement of this sort may, from the point of view of political science, be pronounced destructive both of civil liberty and of federal republicanism. Modern political science — especially the political science of the modern federal republic — would, therefore, view with grave concern the destruction of private corporations and the assumption by government of any considerable portion of the business which they transact. While a governmental control, corresponding naturally in each case with the governmental powers conferred on corporations, may be safely exercised with reason and justice, their destruction, either directly or indirectly, would lead to a catastrophe in liberty and government which federal republicanism would hardly survive.

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THE CONTINENTAL SYSTEM OF NAPOLEON.[1]

THE phrase "a nation of shopkeepers" was used to stigmatize the English by Samuel Adams in the *Independent Advertiser* as early as 1748. It expressed the feelings of the English in America toward the English in England with perfect accuracy, and was destined to become a "winged word" throughout Europe. The Seven Years' War was a struggle for commercial supremacy which made England in a new sense the arbiter of the world's commerce. The American Revolution began — ostensibly, at least — in certain questions of trade, taxation and representation; and the fundamental question of racial and institutional development, which bore much the same relation to the struggle as that of slavery bore to our Civil War, did not appear until its close. Again, the French Revolution was apparently concerned at first with matters of internal finance and taxation; but before the close it was plain to every observer that the relation of the new republic to the balance of political and economic power throughout Europe was the question on which hung its stability. Politically, England had suffered a reverse in our Revolution, but she had managed to retain her control of American commerce. In the year 1783 she was distinctly stronger than any other land, not even excepting France. On the outbreak of the Continental Revolution she had everything to win or lose in the decision as to what influence should preponderate on the globe at the close of the epoch which she had inaugurated in her own Revolution of 1688. The armed peace which lasted to 1793 was therefore a pregnant time in the field of political and economic speculation — a period in which the wealth of England was the cynosure of all eyes and the

[1] Alberto Lumbroso, Napoleone I e l'Inghilterra; Roma, 1897. J. H. Rose, "Napoleon and English Commerce," *English Historical Review*, 1893, p. 704; see also the other later writings of this excellent scholar. Paul Rocke, Die Kontinentalsperre; Naumburg, 1894.

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universal topic of discussion. Yet the conclusion reached in France was that expressed by Kersaint in his speech before the Convention on January 13, 1793: "The credit of England rests on a fictitious wealth."

This and a similar statement by Brissot represented the view of the extreme radical party. At the beginning of the discussion there had been many opinions. Pitt's commercial treaty of 1786 was highly favorable to the wine growers of the south and to such manufacturers of the centre and west as did not compete directly with those of England; accordingly, it was popular in those regions. But in the north, where the industrial and commercial interests were in direct competition with those of Great Britain, the treaty was regarded with detestation, as preliminary to the further development of a deep-laid plot to annihilate French trade. With the march of political events this feeling spread, and France, from being a land guided by free-traders, went to the opposite extreme and became strongly protectionist. Reviving the commercial policy of the old *régime*, the republic outran the zeal of the monarchy. Such, according to our best authority, Mollien, was the condition of public opinion when Bonaparte took charge in 1800.

It is needless to say that a man like the First Consul, who was a suitor for public favor, made the universal jealousy of England's commercial supremacy in a special and peculiar sense his foremost care. But that Bonaparte did not originate the high-protection temper of France is proved by the remarkable enactment known as the *Loi de 10 Brumaire, An V* (October 31, 1796). This drastic measure forbade the importation of all manufactured articles, either made in England or passing through the channels of English trade by land or sea, except under certain stringent and exceptional regulations as to transshipment; and ordered the confiscation of such articles, if found in a French port on any vessel whatsoever. The carefully prepared list of the articles of English manufacture thus to be shut out included absolutely everything in the production of which the splendid expansion of English manufactures at the

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close of the last century made Great Britain supereminent — products of the loom, the forge, the tannery, the glass house, the sugar refinery and the potter's kiln. Fourteen concluding articles of the law enacted a system of trade control whereby, to all appearance, the evasion of either the letter or the spirit of the statute was made impossible. Yet for a time the disintegration of the public powers under the Directory was such that, in spite of "the exasperation of the national hatred against the English government," the law was simply ignored. On December 4, 1798, however, there was a sudden change ; without warning, strong military detachments were placed at all the gates of Paris and every vehicle was carefully searched ; domiciliary visits were commenced by the customs authorities and were continued until all English wares were removed from commerce ; and French public opinion supported these proceedings, which the English stigmatized as "legal robbery." The fact was that Napoleon Bonaparte had temporarily taken up the task of administration, and, having correctly read the public temper, was beginning the policy of "thorough." The treaty of Campo Formio had been concluded; and, though he was only commander-in-chief of the French army — and that by construction rather than in form — he was really the arbiter of the government. Whatever the masses thought, the Directory knew that the fate of France was in his hands; and nothing confirmed that opinion more strongly than the ease with which the law enacted two years before was now enforced. Having made what he considered easy terms with Austria, he had determined to destroy the credit of Pitt's government, by attacking English industries and commerce, and to defy, if necessary, the neutral carriers of the world. It appears to have been at this time that his mind formed the "Chimæra," as a French historian calls it, which in the end proved his ruin — the conception that, if only the conservative administration of Great Britain could be discredited, the Whigs would adhere to "the republican peace."

The time was not ripe for any attack on England more direct than this; and to occupy the interval until it might

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become so, the well-worn scheme of harassing her at her extremities was revived. The uneasy Bonaparte was temporarily removed from the scene of administration by the Egyptian expedition, intended at least to menace English commerce in those distant parts of the earth, if not to work the complete ruin of her Oriental empire. But if the time was not ripe to engage in active hostilities for the enforcement of an economic doctrine, this fact was not due to the absence of such a doctrine, formulated and avowed. The theory of a closed jural state, which had been evolved in defense of the final stage in the formation of European nationality, was itself undergoing an expansion in the direction of expounding the international relations of states in commercial affairs. In 1801 Fichte published his famous treatise entitled *The Closed Commercial State*, his contribution to the literature of Utopias. Defining the jural state as a limited body of men subject to the same laws and to the same coactive sovereignty, he declared that the same body of men ought to be stringently limited to like reciprocity of commerce and industry, and that any one not under the same legislative power and the same coactive force should be excluded from participation in this relation; thus would be formed a closed commercial state parallel to the closed jural state. His treatise was divided into three books, entitled respectively, "Philosophy," "Contemporary History" and "Politics," preceded by an introduction discussing the relation of the rational state to the real, and of pure public law to politics. The first book was merely an elaboration of his idea as to what is just and right within the rational state, in view of trade relations as they are; in the second book he proceeded to discuss the actual condition of commercial intercourse in existing states; and in the third book he considered how the theory of a closed commercial state was to be realized. The vital portion of his argument lay in the statement[1] that if all Christian Europe, with its

[1] Der geschlossene Handelsstaat. Ein philosophischer Entwurf als Anhang zur Rechtslehre und Probe einer künftig zu liefernden Politik (Wien, 1801), p. 109.

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colonies and factories in other quarters of the globe, was to be considered as a whole, trade must remain free as it once was; if, however, it was to be divided into several wholes, each under its own government, it must likewise be divided into several entirely closed commercial states. Said he:

> Those systems which demand free trade, those claims to the right to buy and sell freely in the whole known world, have been handed down to us from among the ideas of our ancestors, for whom they were suited; we took them without examination and adopted them, and it is with trouble that we substitute others for them.

Seven years later the same philosopher declared, in his better-known *Address to the German Nation*, that the much-vaunted liberty of the seas was a matter entirely indifferent to the Germans. For the preservation of their peculiar genius, he argued, they should be saved from all participation, direct or indirect, in the wealth of other peoples; otherwise the curse of commercialism would overtake them.

Thus the "idealogues" of Europe, German and French, held identical opinions. They appear to have had multitudes of supporters in all lands. At any rate, it is idle to charge Bonaparte with being the inventor of the rigid protectionist doctrines that he endeavored to apply to the dominions which, when acquired by conquest, he intended to incorporate in a European empire having its capital and administrative seat at Paris. They were held by the men of the Terror in 1793, by the Directory in 1796, by the overwhelming majority of the French people in 1798 and by a respectable number of Germans and of Americans in the years immediately succeeding; while they are still held by immense numbers of those in whom the idea of nationality preponderates over all other political concepts.

The Berlin Decree, which is generally considered to have inaugurated the Continental System in form, is, in fact, antedated by the Orders in Council of Great Britain. During 1801 English commerce was considerably greater than it was during 1802, the year of nominal peace; and this was due, of course, to the fact that the commercial warfare was not even

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nominally discontinued. The real trouble felt by Lord Whitworth, the British ambassador at Paris, was that the existing commercial situation of his country was intolerable, and that he must find some *casus belli* in order to end it. It is well known that he fixed on a very trivial pretext, the conduct of Bonaparte at a public reception in the Tuileries, and that Great Britain had much difficulty in making the flimsy excuse appear important. The fact was that the First Consul was using the peace to extend the protective system of France over all the lands which he had conquered in Northern and Central Italy and to force Holland and Switzerland into his customs union. In consequence English commerce was suffering, and the mission of Sebastiani into the Orient made it seem highly probable to English merchants that the process of further diminishing their trade was already under way in those distant parts. The publication of Sebastiani's report was the last straw in the burden of the British merchants, and they refused to carry the load any longer. Bonaparte said that the independence of a nation carried with it the absolute control of its trade, and that if Great Britain intended to keep both Gibraltar and Malta, she virtually announced by that fact her determination to unite the commerce of the Indies, the Mediterranean and the Baltic in a single system controlled by herself, which would create a situation intolerable and impossible.

The Peace of Amiens was merely a truce, and the only question as to its duration was one of reciprocal forbearance and endurance. As soon as it became clear that neither England nor France would abandon the idea of commercial supremacy, the vital matter of policy on both sides was how to reopen the war. To do this was to assume a fearful burden of responsibility. History is still striving to determine who gave the immediate impulse; for whoever did give it is held responsible for the appalling bloodshed of the Napoleonic as distinguished from the Republican wars. To-day even the English historians of the most enlightened sort admit that France was tricked into the declaration of war. The coalition was in process of formation within a few days after the ink was dry on the

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treaty of Campo Formio; it was in readiness when hostilities broke out; and the fuel necessary to make the intermittent flickering flames burst forth anew was supplied by the successive Orders in Council.

In 1805 there was printed in London and published anonymously a book which is now believed to have been officially inspired. It was actually written by James Stephen, and the title was *War in Disguise, or the Frauds of the Neutral Flag.* Its argument was the need of the destruction of France to prevent the ruin of England. The immediate dilemma considered was the sacrifice of Great Britain's maritime rights or a quarrel with the neutral powers. The author thought that the system of licenses — "salt water indulgences," he called them — was shaking England's supremacy exactly as the papal indulgences of the fifteenth century had shaken the Roman supremacy. In attacking neutral trade, he thought, there was little danger of provoking hostilities or evoking reprisals. As to America, particularly, a non-importation policy on her part would injure herself alone. She was far too honorable to confiscate the property of English merchants within her borders and far too shrewd to expose to retributive seizure the enormous commerce which she herself had afloat. Suppose, however, he continued, that neither the sacrifice of maritime rights nor the quarrel with neutral powers be accepted, there remains still a third possibility — to admit the pretension that "free ships make free goods," to suspend the navigation laws and then to seize all the benefits of neutral carriers. "Let brooms be put at the mastheads of all our merchantmen, and their seamen be sent to the fleets." This, he argued, would be a less evil than that under which English commerce was suffering, unless, indeed, all parties, including the enemy, would abjure the right of capturing merchant ships or private effects of an enemy — a visionary means of reconciling naval war with commercial peace. Such general abjuration was impossible, and there remained no remedy for England's ills save peace with Bonaparte. But the mere suggestion of this action was preposterous. The insuperable barrier was the British constitution. Austria and

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Russia might make peace with a military despot; but with a man who employed the leisure of peace for no other purpose than to enslave the smaller powers of the Continent no peace was possible for a free country like England, except such a one as would be equivalent to absolute surrender. As might have been expected, the Englishman who wrote *War in Disguise* concluded his argument with a pious appeal to the Almighty, obedience to whose righteous laws is the soundest political wisdom, and who wills not only the end, but the means — in this case "volunteers, navy and maritime rights." This temper for war to the bitter end was quite as strong in France as in England; and while the English appealed to God and righteousness, it was equally characteristic that the French were at the same time exploiting a parallel drawn from classical history — that of Rome and Carthage.

The Grand Army of England, assembled by Bonaparte at Boulogne, was a two-edged weapon. Napoleon told Metternich that he always intended to use it against Austria, as he actually did use it; but he told the captain of the *Northumberland*, on August 15, 1815, that he had intended the invasion seriously, expecting to land as near London as possible. Although these antipodal statements were clearly intended to flatter the national pride of the respective dignitaries to whom they were addressed, yet, paradoxical as the assertion seems, when taken together they express the exact truth: successful invasion would have involved the immediate overthrow of British power; while protective exclusion and the destruction of the coalition was the slower, perhaps, but the more certain of the two ways. The latter was probably the intention toward which Napoleon leaned most seriously. By compelling the British to maintain a costly war establishment, the great schemer would exhaust their by no means bottomless purse; and thus would be able to cripple the equipment of the coalition, to expand by victory the territorial empire of France, and to open the way for her enterprise to the eastward. Finally, Napoleon made no serious effort toward the "Descent," using the notion to extort war funds from the French exactly as the Jacobins and the

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Directory had done; and the actual fact of the magnificent countermarch toward Vienna and the results of Austerlitz ought to convince us that, while at times he did contemplate invading England, his mind was on the whole directed toward the course he actually pursued — that of striking at the coalition through Austria.

The extension of the protective system beyond France and the countries immediately under her control began in 1803, when Spain was admonished to observe it or take the consequences; immediately after Austerlitz, Istria and Dalmatia were included in the system. When, thereupon, Prussia was requested to include the North Sea coasts in its operation, as the price for the occupation of Hanover, Great Britain retorted by her Orders in Council, declaring the shore line from the mouth of the Elbe all the way around as far as Brest to be in a state of blockade. Prussia chose to accept neither the terms of Great Britain nor those of France, and struggled to remain neutral — a sheer impossibility; the Czar of Russia then repudiated the treaty into which his ambassador, d'Oubril, had been drawn by the wiles of Talleyrand; in due course of time followed Jena and Friedland; and at last the way was clear for turning a protective system hitherto more or less local into one which could be more or less Continental. The Berlin Decree was the longest step possible after Jena; while the Milan Decree was the natural sequence of the enlarged opportunity which the Peace of Tilsit gave for pursuing the same old economic policy.

In justification of his course, Napoleon pleaded the moderation he had shown in dealing with the enemy after the three first coalitions, and declared in his message to the Senate that he desired such a general European peace as would guarantee the prosperity, not of England alone, but of all the Continental powers; but as the attitude of the enemy rendered this impossible, nothing remained but to adopt measures "which were repugnant to his heart." The Berlin Decree set forth in its preamble that England paid no respect to international law; that she considered as enemies, not alone the organized war power

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of hostile states, but the persons and vessels of their citizens engaged in commerce, taking the persons prisoners of war and the ships as prizes; that she extended the principle of blockade to unfortified towns, harbors and river mouths, declaring places to be blockaded before which there were no forces sufficient to enforce the blockade, and extending this absurdity to the coast lines of entire empires; that, finally, since this conduct had no other intention than the ruin of all Europe to the advantage of English trade, "We have resolved to apply to England the usages which she has sanctioned in her maritime legislation." The principles of the decree were asserted to be valid just as long as England should not admit the validity in maritime war of the principles which control war by land; the laws of war

cannot be applied, either to private property, whatever it may be, or to the persons of those who are not belligerents, and the right of blockade must be confined in its application to strong places really invested by sufficient forces.

The British Isles were then declared in a state of blockade and all the rigors of the English system were ordered to be carried out in detail. Finally, notification in due form was given to the Kings of Spain, Naples, Holland and Etruria, and to all Napoleon's allies whose citizens were suffering from the "barbarities of English maritime legislation."

The date of the Berlin Decree was November 21, 1806. On July 25, 1805, Montgaillard, a clever scoundrel, — of whom, as Napoleon remarked, something could have been made if he had not been fit for hanging, — wrote a memorial [1] which was presented to Napoleon and is claimed to have been the basis of the Continental System. As expanded on March 24, 1806, this paper represents that England has in view the sole object of destroying the French marine in order to destroy French commerce, and that, consequently, the imperial idea of Europe is one to which she can never accede even by a temporary peace; that she will never renounce her claim to Hanover or permit

[1] Only discovered and edited by C. La Croix in 1896. Montgaillard, Mémoires diplomatiques, 1805–19.

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the occupation of Holland, her ultimate intention being to establish in Egypt a station to protect her commerce by the Red Sea with India. Portugal, which will always side with England, must, therefore, be incorporated with Spain; while Crete and Egypt must be occupied by both military and commercial posts. The influence of England's deep, fierce hostility, it continues, is seen in the refusal of both Austria and Russia to recognize the newly created vassal kingdom of Italy. England arrogated the tyranny of the seas in 1651 by the Navigation Act passed under the Protector; her very existence is founded in traffic and commerce, and without it there is no movement in her body politic. She is forced to disregard all provisions of international law which tend to diminish her commercial strength. William of Orange created her national debt; and successive sovereigns have in their various Continental and American wars increased it to its present dimensions — estimated at about six hundred millions sterling. To carry this enormous obligation and emit the new loans necessary to sustain the respective coalitions, it is essential that her commerce should continuously expand.

> It is through her commerce that England must be attacked [says Montgaillard]; to leave her all her gains in Europe, Asia and America is to leave her all her arms, to render conflicts and wars eternal. To destroy British commerce is to strike England to the heart.

He then advances the idea which appears to be the germ of the Continental System: Since Russia seems to favor the plans of England and since Sweden is destitute of both independence and dignity, France must begin the attack on the maritime legislation of the enemy. She has only to make the navigation acts her own, modify them in favor of the powers which accept them and adopt a policy of reciprocity.

How far these counsels influenced Napoleon it is impossible to say; but the chronological coincidence has some value in support of the claim that Montgaillard at least gave the final impulse to the emperor. There seems, however, to have been a fatal flaw in the reasoning of both. As the latest Italian

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commentator has remarked, there was no symptom in either executive or counsellor of any grasp upon the fact that by the amazing development of industry in England the wealth of the entire world had been enormously increased — so enormously that without a corresponding increase in other nations no international rivalry in prosperity and influence was at all possible. It was then, as indeed it is still, generally supposed that England had reached her eminence in commerce by a series of flagrant wrongs; and when the successive steps of aggression and reprisal are chronologically arranged, there is a superficial appearance of truth in the charge. The Orders in Council were iniquitous anachronisms, and they gave a color of justification to the equally barbarous decrees of France — decrees in themselves preposterous, and supported, moreover, by a blockade which was as purely fictitious as that by which Great Britain supported her Orders in Council. The original sketch of the Berlin Decree has been recently discovered in the National Archives at Paris, and it is very important to note that it does not contemplate that portion of the completed document which covers the lands either allied to or under the influence of France; this provision seems to have been added after long reflection. The natural complement of a fictitious blockade was a fictitious protective system; the one was as absurd as the other.

In her puzzled uncertainty, and under the stress of necessity for immediate action of some kind, England took the next false step in the same direction and issued the Orders of January 7, 1807, declaring all the ports, not only of France, but of her colonies, in a state of blockade, and throwing down the gauntlet to the neutral states by forbidding any ship to trade between the ports of France, of her colonies and of the countries in the French system; while on November 11 a new decree extended the inhibition to all ports whatsoever from which the English flag was excluded. This extreme position was pronounced by Lord Erskine to be unconstitutional and contrary to the law of nations. That it was not intended to be enforced, but was to be used as a pretext to secure maritime

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monopoly is proved by the fact that already, in the month before, Great Britain had inaugurated the policy of evading her own decrees, raising the blockade of both the Elbe and the Weser and winking at the contraband trade which immediately sprang up in consequence. Napoleon was therefore untiring in the system of reprisals; on November 23 of the same year he issued the Milan Decree as a retort both to the scheme of contraband trade put into operation at Bremen and Hamburg and to the Orders of November 11; and to supplement this, a second and more rigorous decree was promulgated on December 26, 1807. Any vessel which had suffered the visitation of English cruisers or had put in at an English port was declared thereby to have become English and consequently subject to confiscation; an embargo was also placed on all neutral ships at that time in French harbors. Prussia, Sweden and Denmark adhered promptly to the new Continental System. England was terrified at the consequences of its own temerity, and on April 26, 1809, modified her orders by limiting the blockade to "all the ports of the so-called Kingdom of Holland, of France and her colonies and of Southern Italy from Orbetello to Pesaro inclusive." Yet, for all this, Austria and Switzerland gave in their adhesion somewhat later; while America stuck to the principle of non-intercourse and finally obtained the revocation in her favor of both the Berlin and the Milan Decrees and, in the end, of the Orders in Council. As is well known, public necessity proved to be stronger than theory; Napoleon's very energy in depriving Continental Europe of colonial and English-made articles which, once regarded as luxuries, had in time become necessities, together with the consequent exasperation of Great Britain at the diminution of her trade, was one of the bonds which combined the most discordant political elements into a union for the destruction of French empire.

The English side of the secular controversy which has raged over the right and wrong of the Continental System has been presented by various writers with great ingenuity and acumen. The seizure of private persons and property on the high seas,

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runs their argument, was simply the retort to the French decree of 1798 which ordered the execution of all neutral sailors found on English ships; the French had been the first to disregard the law of nations in seizing the property of English merchants on *terra firma* at Leghorn, and from times immemorial the usage of Europe had authorized the seizure of private property on the high seas; the paper blockade, though illegal and absurd, was resorted to under great provocation, because Prussia had occupied Hanover, a territory which belonged, if not to England, at least to the holder of the English crown. It follows, therefore, that every measure taken by England was strictly in the nature of a reprisal. This legal plea is a question to be considered by jurisprudence, partly in the light of the changing identity of France and partly in that of variations of obligation due to the incidents of warfare — such, for example, as the conduct of England at Copenhagen, which was only the culmination of a series of similar acts in the treatment of all neutrals. It seems very doubtful whether any legal argument can avail much in explaining the inconsistencies incident to such struggles as the wars which were waged during the Napoleonic epoch. The real and paramount plea of England is self-defense; the arguments based on the political and economic emergencies in which she was involved, in consequence of her amazing constitutional and industrial preëminence, have a validity far beyond any which inheres in pleas that are purely technical—and confined, at that, to the field of international law.

Certain facts recently noted by Rose, the well-known Cambridge historian, throw a flood of light on the miraculous development of English and Scotch industry during the Napoleonic epoch. Robert Owen stated, and in all sobriety, that in 1816 his 2000 operatives at New Lanark accomplished with the aid of the new machinery as much as had been accomplished by all the operatives in Scotland without it! In his autobiography Owen further emphasizes the extent of the industrial revolution by estimating — and the estimate is conservative — that the work done by the manufacturing population of Great Britain with machinery could not be done without it by a

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people numbering less than 200,000,000. There was no corresponding development of manufactures on the Continent — not even in France; thus, it was not until 1812 that steam spinning was introduced into Mulhouse, the great industrial capital of Alsace. Similar comparisons could be drawn in many other respects between Great Britain and her Continental neighbors, but this single contrast is enough to render very striking the fact that no other power could vie with her in supplying the world with cheap and useful wares of such a sort as to become after a first trial indispensable to the masses of mankind. She found herself, therefore, in the position of being required for the sake of peace to discard all her commercial advantages, all that she had gained in her industrial evolution — all the preëminence, in short, which she held by exertions and sacrifices that had been continuous for centuries.

Does such a situation create no moral obligation? Is it supposable that a nation could consider for an instant the possibility of destroying itself and its inheritance, for the sake of a peace which would surrender all its advantages to an active and irreconcilable enemy? If there were no alternative except war or suicide, is Great Britain to be blamed for choosing war, however desperate? Moreover, there is another consideration of the first importance, which has a moral quality universally recognized in other spheres. By common consent no occupation of discovered land holds good if it be not permanent and beneficent; and likewise the closed economic state cannot be permanent unless it prove to be universally beneficent. Such a state now appears to be as uncertain in its operations as the closed jural state has proved to be under the operation of international agreements which assist one nation to enforce its municipal law by the sanction of another. Extradition treaties and other equally pregnant innovations in international law are now generally admitted to have a jural validity, in many of the most important relations of men, that is both higher and stronger than that of the municipal law of the various states which compose the present federation of civilized powers. In the same way — tacitly, perhaps, but none the less really — it

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is coming to be widely conceded that the markets of the world cannot be closed to wares so good and so cheap as to be necessary for the ever-rising standard of comfortable living demanded by wage earners in every land, except on condition that such wares can be produced sooner or later as well and as cheaply in the land which protects itself against others of its own class. This feeling is the cause of that deep-rooted enmity of the masses to the customs gatherer and his kind — a feeling which makes them the most adroit and unscrupulous smugglers. The dislike they have of the travelling and smuggling of the rich is largely created by the knowledge, or at least the certitude they feel, that thereby the rich secure as buyers in the world's markets advantages which are not open to themselves. It is needless to explain that no inkling of such a temper, however common in earlier generations, is discoverable in the England of Napoleonic times; but the selfishness expressed in the Orders in Council was the cover for a growing instinct that later became an avowed principle, which is apparently destined to be erected into a moral and jural right, of validity among all civilized peoples — the right to secure, wherever they can best be obtained, what are generally regarded as the essentials of a high standard of life. The present cry of the labor agitators for what they call a "living wage" means for the protectionist state one of two things: either it must tax itself to pay a scale of wages which will secure the desired well-being to the wage earners within its borders, or it must make the wages actually paid capable of purchasing this well-being, by opening home markets to the competition of the low-wage countries. This notion has already been so far entertained as to result in the admission, duty free, into all protectionist lands of such articles as are not of native growth or manufacture; and the only plea for high protection which is now considered valid is based on the assumption that exorbitant duties are only temporary and must be removed as soon as the infant manufactures which they protect can walk alone and compete in the markets of the world. The spread of free-trade doctrine is everywhere

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conterminous with the spread of free-trade ability. The criterion of personal and of national success is ultimately the same: power of any kind will create activity and a field for that activity; and the greater the power, the wider the field which it will preëmpt. Apparently this has been true in spite of both artificial and so-called natural barriers. Human ability is shown by history to be like natural energy: personal or collective, it is infinitely transformable and can be directed into all channels. The mountain waterfall drives the trolley-car, which at the same time it both heats and lights; the toil of the artisan and the laborer, together with the enterprise of the manufacturer and the merchant, moves armies and fleets, secures settlements and markets in all lands, creates public and even cosmopolitan opinion — in short, directs the course of empire throughout the world.

The effort of Great Britain to establish a monopoly of ocean commerce was accompanied by one immoral incident of the most far-reaching importance — the inauguration of a licensing system whereby, with simulated papers, vessels of any origin successfully evaded the provisions of both the British orders and the French decrees. This procedure for a time debauched the commerce of the world, and was a fit supplement to the acts of violence severely reprobated both then and since. In the main, fraud and violence brought greater profit to France than to Great Britain. The relaxation in 1798 of the rule of 1756 had accrued to the advantage of the only strictly neutral power of the world, *viz.*, the United States; the orders and the decrees so hampered and exasperated our merchants that we first passed the Embargo Act and then took refuge in non-intercourse. By that time English commerce had so seriously declined under the working of the Continental System that violent agitation against the orders was inaugurated in Great Britain itself. Almost at that very moment, however, Napoleon drove the reigning house of Portugal to Brazil, and thus opened the most important ports of South America to British importations. The glut of the English storehouses was thus momentarily relieved; and, while the merchants suffered serious loss

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from the low prices they received, they were saved from absolute bankruptcy. For two years longer the struggle on both sides was continued with desperation; and would probably have resulted in the despair of Great Britain, had not the improved methods of agriculture, introduced along with the improved methods in manufacturing, made it possible to feed for some time longer the still comparatively small population by means of home production.

This was the interval which brought matters to a crisis on the Continent. Great Britain could get on very well without the silks and other luxuries produced in France, substituting for them woolens and cottons; but English cruisers made almost impossible the importation into Europe, not only of colonial necessities, but also of the raw materials necessary for indispensable manufactures. By the system of licenses alone was it possible to maintain the French army; cloth and leather wherewith to outfit Napoleon's soldiers were brought from England into the Hanseatic ports in open contempt of the Continental System. Since Great Britain also held the monopoly of coffee, tea and sugar, without which the not more than half-hearted Germans of the Rhine Confederation would not live and which Napoleon did not dare to cut off entirely from even the French and Italians, it was thought that the only possible reprisals against her not already instituted would be in the line of further restrictions on her manufactures. During the late summer and early autumn of 1810 were promulgated the three decrees of Trianon, St. Cloud and Fontainebleau; and not only were enormous duties imposed on all colonial products, wherever found, but all English goods discovered in the lands of the French system were to be burned. Neutral ships, including those of the United States, were at the same time utterly shut out from all the harbors of these lands.

This was the beginning of the end; for in the effort to destroy the English sea power by condemning it to inanition, Napoleon deprived the manufacturers in his own lands of all their raw materials. Even if this had not been a sufficient cause, their manufacturing plants were not modern enough to have supplied

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the markets open to them. Russia endured the miseries of privation for but a single year, and in 1811 opened her ports; while smuggling on her boundary lines at once assumed dimensions which rendered anything approaching an administration of the Continental System the work of an army of customs officers, so that after 1812 the effort to enforce it was necessarily abandoned. Our declaration of war with England came too late to exert any influence, one way or the other, on the final solution of the question whether sea power or land power was the stronger in the civilized world at the opening of this century. The death throes of Napoleon's imperial system were primarily caused by the exhaustion of France and of himself; when he made himself a dynastic ruler, his prestige and his inherent strength were dissipated as rapidly as were those of the popes when they joined the ranks of the petty princes of Italy. Possibly an empire of United Europe based on the liberal ideas of the day might have had some chance for life, but a single dynastic power pitted against all the dynasties of the Continent, and also against the moral strength of British preëminence in politics and industry, had none at all. It is a mistake to regard the Continental System as an influential cause of Napoleon's overthrow, except in so far as it displayed the folly of attempting to apply what is at best a temporary national expedient as a permanent principle in a world system. The effort did cripple the resources of France and alienate much Continental sympathy from the emperor, and it embittered Great Britain to the point of desperation; but the result of the struggle to found a Napoleonic hierarchy of two degrees on the states of the Continent was otherwise determined. It was decided by the national uprisings which began in Spain and ended with the consolidation of dynastic influence in the Holy Alliance.

WILLIAM M. SLOANE.

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THE ENGLISH LOCAL GOVERNMENT BOARD.

ALL historians agree that Norman ideas and institutions profoundly influenced English local government, and that the most noticeable change brought about by the Conquest was the substitution of a strong centralizing for an extreme decentralizing tendency. The establishment of county sheriffs, appointed by and responsible to the king, the growth of their power and influence, the loss of local control over local affairs, and the interference of the crown in all matters, are facts universally familiar. But this period, in which the sheriff was the principal financial, judicial, military and police authority in local administration, was followed by a period in which there was greater self-government. The sheriff was always an unpopular officer; and, as the barons and the landed aristocracy became more powerful, his functions were gradually transferred to the justice of the peace. The justices, acting singly, or in petty or quarter sessions, came to possess all the judicial and administrative functions of a local character. The sheriff, in the meantime, was reduced to the position of a ministerial officer; for such of his powers as had not been transferred to the justices came to be exercised by royal courts.

This transformation resulted in a very decentralized system; for although the justices were appointed directly or indirectly by the crown, and were removable by the same authority, in practice they were usually chosen from the localities where they were to act, and were seldom, if ever, removed. No salary was attached to the office, the duties were arduous and service was obligatory. Consequently, well-to-do persons were always chosen. These facts rendered the justices very independent, and the control of the crown was very slight indeed. The threat of dismissal from office had no effect, for it merely meant relief from arduous, unremunerative service. In the absence of the central administrative control which had characterized the Norman and early Plantagenet period, it became

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necessary to regulate minutely the powers and duties of the justices by statutes, using judicial control to enforce obedience. In practice this system produced irresponsibility and inefficient administration, as the Report of the Poor-Law Commissioners and subsequent Parliamentary investigations demonstrate. Private rights were not trampled upon, but the interests of the country as a whole were suffering. Local self-government pure and simple proved to be productive of wide-spread abuses, to correct which was the aim of the reform movements of the fourth decade of this century.

Since 1833 legislation dealing with local administration shows two movements. One has for its object the complete centralization of administration; the other, the introduction of a system of central control over local administration. The most important instance of the former was the assumption of the management of the prisons by the central government. In addition, the registration of births, deaths and marriages, the enforcement of factory laws, and the combating of epidemic and contagious diseases have ceased to be local functions. In all the other fields of local government of any importance central administrative control has been introduced. Poor relief was thus treated in 1834; and public health, police, education, highways and allied subjects have followed at various intervals. The authorities exercising this control have been many, but at present the principal ones are the Local Government Board, the Education Department and the Secretary of State. The first is by far the most important; and since it has achieved extremely beneficial results, its powers and functions are of great interest to all who in this country are grappling with the problem of the relation of the commonwealth to the township, to the county and particularly to the city.

I. *History.*

Historically the Local Government Board owes its origin to the Poor-Law Amendment Act of 1834, which provided for three commissioners, to be appointed and dismissed by the

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crown at pleasure. Care was taken to secure separation from the legislative department of the government by forbidding any person to be a commissioner and a member of the House of Commons at the same time. The powers of the commissioners were wide and far-reaching, and, so far as poor relief is concerned, not many changes have since been made; the whole field was put practically under their absolute control. Few discretionary powers were left to the local authorities, beyond the election of officers and the distribution of relief in accordance with the statutes and orders of the commissioners. When one considers the decentralized condition of local administration prior to 1834, it seems hardly credible that the conservative English should have made such sweeping changes in so short a time. The woeful condition of the laboring classes, the apparent hopelessness of any other solution and the general reform movement of that period are the only grounds upon which such a long stride towards efficient government is explicable.

The first important change in the organization created in 1834 was made in 1847, when the advisability was perceived of more closely connecting this new authority with the other administrative departments and with Parliament. Several of the chief officers of state[1] were made commissioners, *ex officio*, who, together with one or more persons appointed by the crown, constituted the Poor-Law Board. The first person appointed was to be president, and he, with one secretary, might be a member of the House of Commons. The custom of extending the life of the board for from one to five years at a time was followed until 1867, when at last it was made permanent. The title Poor-Law *Board* was a misnomer. Literally it was not a *board*, but a single-headed department; for the *ex-officio* members seldom if ever met, and all orders were drafted and executed by the president, the secretary or the assistant secretary. The same is true of the Local Government Board at present.

In the year 1848 the General Board of Health was created, in response to a demand for more efficient administration in

[1] The Lord President of the Privy Council, the Lord Privy Seal, Her Majesty's Principal Secretaries of State and the Chancellor of the Exchequer.

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the field indicated by its name. Conditions had become intolerably bad, and it was thought that reform might be secured by applying the same principles that had worked such beneficial results in the administration of poor relief. Hence a central authority was created, consisting of one *ex-officio* member — the First Commissioner of Works — and two other persons appointed by the crown. This board did not possess the wide powers held by the Poor-Law Commissioners. Its principal functions consisted in putting into operation the provisions of the act which related to public sanitation, whenever the death-rate exceeded twenty-three per one thousand inhabitants for seven years, or when one-tenth of the population of a locality petitioned for its application. The board also possessed certain powers relative to local officers, the approval of contracts, the mortgaging of rates and the adjudication of appeals from the decisions of local authorities.

The system thus established remained operative for ten years, but the beneficial results were practically limited to the promulgation of scientific knowledge and the continued agitation of the subject. The fault was not, however, in the theory of central control, but in its application. Before judgment is passed upon the promoters of this and subsequent acts, there are many extenuating circumstances which must be taken into account. The field was new and uncultivated: medical and sanitary science had not made the invaluable contributions now so familiar to all. The selection of the first president was somewhat unfortunate. Better administration required higher taxation, and many were more influenced by the latter than by the former. These facts, together with the defects of the act, caused central administrative control to receive a momentary check. The legislation of 1854, 1857 and 1858 transferred certain powers of the General Board of Health to the Secretary of State, and many others to the Privy Council. The board, deprived of its functions, ceased to exist. But there was more than a mere transfer of powers: there was a decided decrease in the central control exercised. The compulsory features of the early acts were dropped.

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Advice took the place of commands. It was sought to facilitate rather than to compel the exercise of larger powers by the local authorities.

Very soon the need of greater central control was again felt, and in the sixties power to enforce the law was given by several acts to the Secretary of State. If after due notice the local authorities failed to comply with the law, he was empowered to appoint persons to perform the neglected duties and to force the locality to bear the expense. About 1871 it became manifest that to secure the best results a union of the various central departments possessing similar powers was necessary. At least four departments, the Home Secretary, the Privy Council, the Board of Trade, and the Poor-Law Board, were vested with more or less control. In many instances their spheres of activity were not mutually exclusive, but their independence of one another prevented unity of purpose and action. The need of simplification was obvious and urgent. Accordingly, the Local Government Board — which was merely the Poor-Law Board under a new name — was created. To this new body were transferred the functions of the central authorities relative to public health, prevention of disease, vaccination, registration of births, deaths and marriages, baths and washhouses, public improvements, artisans' and laborers' dwellings, and local-taxation returns. In the following year the powers of the Board of Trade and of the Home Secretary under the Highways and Turnpikes Acts were likewise transferred. An act was passed creating local sanitary authorities throughout the whole country, thus indirectly increasing the powers of the board. The existing laws (relating to public health in its widest meaning) were extended and amplified, and in 1875 these statutes were revised and consolidated. The system has since been perfected and completed, and even the Local Government Acts of 1888 and 1894 have added to the influence and importance of the board.

In other fields of local government the same tendency towards central administrative control has been manifest. Since 1856 the local police have been supervised by the Home Secretary.

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The Education Department — or its predecessor — has had control over elementary education since 1833. But the Local Government Board is more vitally connected with local affairs than the other central departments, and hence is more interesting and important to the student of administrative questions.

II. *Powers of Investigation and Inquiry.*

The functions of the Local Government Board are so extensive that a detailed enumeration would be impossible. Only general terms can be used, and minor points and unimportant exceptions must be omitted. It should be remembered, moreover, that English local government is a most conglomerate structure. It reminds one of the old manor house which the traveller meets from time to time in England — a building which has quite lost its original identity, because of the modifications introduced to suit the fancies of succeeding generations. The most violent architectural contrasts strike the eye; for each owner, while adding something to gratify his own taste, has left intact as much as possible of the earlier work. So with local government: incongruity is the rule. And the queer mingling of the archaic with the modern is explicable here, as in the manor house, not on utilitarian, but on historical grounds.

The power of the Local Government Board over the appointment and removal of its subordinate officers is complete. It may establish new offices and it may abolish the old, except those created by law — which, however, are not numerous. The approval of the Commissioners of the Treasury must be secured when new offices are established or new salaries fixed, but this approval has become a matter of form. At present there are about one hundred and seventy officials regularly employed, and besides these there are often others temporarily appointed for special purposes. The list includes not only clerks and secretaries who perform ministerial duties and remain at Whitehall, but also a large proportion of superintendents, district auditors and inspectors. These latter officials travel over the country, examine various phases of local administration, give the author-

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ities the advantage of their wide experience and scientific knowledge, make valuable reports to the board and in some instances perform the actual work of administration. They not only serve as intermediaries between the local authorities and the central government, but are constantly alert to detect and report any infraction or non-observance of orders or of acts of Parliament. Very properly they have been called "the eyes and ears of the board."

The basis for the activity of this efficient corps of assistants is to be found in the extensive powers of investigation and inquiry possessed by the board. Though not as wide as those of similar bodies in Continental countries, these powers are almost startling when the Anglo-Saxon antipathy to governmental interference is considered. The board has unlimited authority to summon and examine witnesses in inquiries touching any subject within its jurisdiction, and to require the production of papers and documents. This authority, however, is usually delegated, in practice, to agents appointed to conduct the investigations. Through the exercise of its powers in this respect the board may always possess an adequate knowledge of the facts in connection with any matter upon which it is required to take action. Furthermore, all local authorities having the power to levy rates, tolls, taxes or dues must make returns to the board of all sums levied or received and of all expenditures. No one who has ever had occasion to refer to the local-taxation returns can fail to appreciate the benefits of this provision and the ability of the board in classifying and arranging these returns. The contrast between English and American conditions at this point is most striking.

III. *Legislative Powers.*

From the standpoint of local government all acts passed by Parliament belong to one of three classes: first, those which take effect upon being enacted by Parliament; second, those usually known as "adoptive acts," which come into operation at the option of the locality; and third, those which require the

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sanction of a central administrative department before being applied in a given locality.[1] The powers of the Local Government Board in connection with this third class are extensive, and have a quasi-legislative character.

All England is divided into rural and urban county districts (sanitary districts), corresponding roughly to the rural or urban character of the locality. The chief difference between the two is in the power possessed by the local authority — the district council. Generally speaking, the rural councils deal with sewerage, drainage, water supply, nuisances, lodging houses and cellars, hospitals, cemeteries and mortuaries, and infectious diseases. Urban councils deal with all these, and, besides, with the maintenance and cleansing of streets and roads, with town improvements, with lighting and with the regulation of traffic. But the line between rural and urban county districts is not sharply drawn. The system is like a series of concentric circles, the outermost, having the largest powers, being the urban district, with all the functions of the public health acts, adoptive acts and kindred others, while the innermost is the rural district of the most limited competence. Between the two are many other districts having various powers and functions. This peculiar condition is due partially to the discretion enjoyed by the localities under adoptive acts, but the more important explanation is as follows.

The Local Government Board has power to create local government districts. Subject to certain regulations assuring the initiative to the ratepayers of the locality affected, the board may, at its discretion, establish entirely new local authorities or transform rural into urban districts, by ascription of the requisite powers to the existing councils. The board may also constitute any sanitary authority whose district abuts upon any port or harbor a port sanitary authority, thereby increasing its powers. By a provisional order, subject to confirmation by Parliament, it may dissolve a local government district, a special drainage district or an improvement act

[1] A fourth class might be added, which would comprise those statutes requiring both local adoption and central approval, but the number of such acts is small.

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district whose area is coextensive with that of a borough. It may likewise confirm, *in toto* or with modifications, schemes for the improvement of districts and houses unfit for human habitation, according to the Housing of the Working Classes Act, 1890. To put into force the provisions of the Lands Clauses Consolidation Acts regarding the purchase of land otherwise than by agreement, the board issues a provisional order; and in the same manner county districts or parts thereof may be united into one district to procure a common water supply, to construct a sewer or for any other purpose lying within their powers. Through the exercise of these functions, it has been brought about that no two districts have precisely the same powers.

The Local Government Act of 1888 made it lawful for the board to transfer by provisional order to county councils those powers and duties of the government departments relating to matters within particular counties, such as were held by commissioners of sewers, conservators or other public bodies — the municipal borough, district council, school board and board of guardians excepted. If the order refers to powers and duties of departments of the central government, it must be approved by the department affected. The powers which it was thought might be transferred were enumerated in the bill as originally introduced, and dealt with burial grounds, piers and wharves, gas and waterworks, tramways, electric lighting, baths and washhouses, and the power to force sanitary authorities to perform their duties. As yet no transfers have been made. One was attempted in 1889, but the opposition was so great that it fell through.

In another class of cases the approval of the board is the only requirement: confirmation by Parliament is not necessary. Agreements made by two or more local authorities regarding the union of sewers, the constitution of any portion of a rural district a special drainage district and the payment out of the local rates of expenses incurred by municipal boroughs in promoting or opposing bills in Parliament are representative of this class. The board may also declare any

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expenses incurred by the district council to be special expenses, which are to be borne by a portion of the district.

Between the foregoing powers, which may be termed quasi-legislative, and what would be ordinarily called the ordinance power of the board, there is but a dim line of separation. The orders issued by the board have all the force of law — provided, of course, the board has not exceeded its jurisdiction in issuing them. From the standpoint of relative importance there is little difference; the orders dealing with poor relief, for example, are much more important and of more vital interest than some of the provisions considered in the preceding paragraphs.

The legislative character of the Local Government Board is also seen in its power over local acts — that is, acts of Parliament affecting particular localities. If a petition has been presented by the guardians of any union or parish, the board through a provisional order may amend or repeal the whole or part of any local act dealing with the administration of poor relief. Under similar circumstances it may amend or repeal, wholly or partially, local acts which deal with the same matters as the sanitary and public health acts. It may likewise transfer to the county council any powers or duties of any quarter sessions, or justices, or committees thereof, under any local act, that are similar in character to those transferred to county councils by the Local Government Act of 1888; and in this case a previous application by the local authority is not necessary. The influence of the board plays an important part also in the enactment of local bills. There is a standing order of Parliament which requires that all private bills relating to subjects within the jurisdiction of the Local Government Board be referred to it for consideration and report. If undesirable provisions or omissions are found, the fact is reported to the select committee which is considering the bill, and almost invariably the recommendations of the board are adopted. Parliament in turn follows the decisions of the select committee, and thus the beneficial results attained are directly traceable to the position of the Local Government Board.

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IV. *General Administrative Functions.*

The powers of the Local Government Board over the actual administration of the poor laws are of the widest extent and application. Even where it has not expressly been given the power to interfere, it has never failed to submit plans, suggestions and instructions upon every phase of administration. A detailed enumeration would be impossible, but briefly it may be said that the board has the power to make rules, orders and regulations for the management of workhouses, the education of poor children, the nature and amount of relief, the making of contracts and the keeping of accounts. One can hardly appreciate the scope of these powers without first examining the orders and instructions, which at present form a volume of 1200 duodecimo pages. The index — one hundred pages more — informs one that everything from "abatements" to "youths" is dealt with. These are only the general orders — orders that affect more than one poor-law union. The number of special orders is not known. It is almost impossible to suggest any subject upon which orders or instructions have not been issued, and oftentimes the minutest details are specified. The time of rising and retiring of workhouse paupers, the amount of soup to be given each person, the preparation of food, the baptism of infants born in the workhouse and many other minor matters are regulated with great precision. The local authorities cannot perform a single duty which is not governed by the rules of the board. Limitations upon the power of the board are few; for those imposed by the statutes are but slightly restrictive, and the courts have not interfered with its action.

In other fields the orders issued do not affect so vitally local administration, but they are by no means insignificant. Thus, the board may order a local authority to remove house refuse from the premises, to clean earth closets, ashpits and cesspools, and to cleanse and water the streets. But the largest powers in this direction are in connection with epidemic, endemic and contagious diseases. Here the board is almost

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supreme. It may make, alter or repeal such regulations as seem proper concerning interment of the dead, house to house visitation, medical aid, disinfection, cleansing, ventilation, *etc.*; and may even determine what authorities shall enforce these regulations. The influence of the board in this direction will become more evident as we proceed, but it may help one to a better realization to know that over 1700 orders are issued annually.

As to the authority of the board over local areas and boundaries, it is hardly possible to separate its ordinance powers from those referred to above as quasi-legislative ; for an alteration of boundaries often means an increase or decrease in the powers of a given area, and the change is often made with this end wholly in view. But from this extreme the provisions shade off into instances where the object is purely administrative, such as the fixing of ward boundaries for election purposes.

Until the Local Government Act of 1888 went into effect the Local Government Board had practically supreme control over local areas so far as the Public Health and Local Government Acts were concerned, but now its powers are somewhat less extensive. It may still, however, merge local government districts, or modify and readjust their boundaries, in almost any manner it chooses. It divides the district into wards; and in case a new district is created, decides the number of councillors to be elected from each. It determines the number of county councillors for each county and apportions them among the localities.[1] It may in certain instances constitute a borough having over 50,000 inhabitants a county borough, and in many other ways may alter the boundaries of local areas. The importance of these and other powers that might be given would in any case be great, but it is much increased by the confused condition of local areas.

[1] Action is usually taken through the issuing of a provisional order which must always be confirmed by Parliament; but, as is true in other cases where a provisional order is issued, Parliament very seldom refuses to confirm. In nearly all cases it follows the advice of the board.

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As to the poor-law areas, the board possesses still wider powers. It may form, add to, take from or dissolve any union; may combine unions and constitute a joint committee of guardians; may for all purposes, except maintenance of a common workhouse and of indoor poor, divide a union which is in two counties into two unions; may unite small parishes or divide large ones; may divide into wards for the election of guardians. There are some instances where the consent of the local authority or a petition to the board is prerequisite to action; but these are rather few, and the opportunities for restricting its discretion are rare.

The approval of local by-laws is another function that plays a large part in the activity of the board. The requirement of approval by a central department is characteristic of all English legislation. It is practically a universal rule that no by-law imposing an obligation upon private individuals can be enforced by a local authority till after such approval, either directly or indirectly, be given; and it is the Local Government Board that examines, and approves or rejects, most of the by-laws issued. In 1895 the board confirmed 283 series, dealing with the following subjects: scavenging and cleansing, nuisances, common lodging houses, streets and buildings, markets, slaughterhouses, hackney carriages, public bathing, pleasure grounds, animals for hire, pleasure boats, houses let in lodgings, cemeteries, mortuaries, offensive trades, sanitary conveniences, swings, water-closets, tramways, highways and locomotives, and omnibuses. The authorities adopting these by-laws included urban and rural district councils, town councils, vestries, local boards of health and county councils.[1] By-laws regarding other subjects, such as fairs, allotments, washhouses, main roads and highways, public museums and gymnasiums, the housing of the working classes and all other matters that are included under public health acts, must also be approved.

The personnel of the local authorities is also controlled in

[1] Borough councils, when acting as municipal authorities, are required to send their by-laws to the Secretary of State, and if not disallowed within forty days by the Queen upon the advice of the Privy Council, they go into effect.

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some measure by the board. It determines the number and duties of the guardians of the poor, and apportions them among the parishes within the union. It may require the guardians to appoint such subordinate officers as it thinks necessary to assist in the administration of the poor laws. The qualifications, duties, method of appointment and removal, tenure and amount of salaries of such officers are likewise fixed by the board, which of its own accord may remove any *paid* officer. In practice the board has not failed to exercise these powers very extensively. A union is usually obliged to appoint fourteen officers and their assistants. The board has analogous authority under the public health acts; but here usually only two officers, the medical officer of health and the inspector of nuisances, are concerned, though these are the most important local officers connected with sanitary administration. To prevent rural councils from paying inadequate salaries and thus impairing the efficiency of their officers, the salaries of the clerk and the treasurer in every rural county district must be approved by the board. And, finally, in the case of one officer — that of the analyst, whose duty is to enforce the law in respect to the adulteration of food and drugs — every appointment or removal requires the sanction of the board.

V. *Functions in Local Finance.*

Over local finances the control which the Local Government Board may exercise *indirectly* is very extensive. Through its authority to order paid officers to be appointed, its quasi-legislative power to command the performance of certain acts and its right to perform the duties of local authorities when they are delinquent, it may increase expenditures, and hence taxation, very noticeably. But in all these cases, and in a great many others that might be given, any control that may be exercised is wholly incidental. Apparently the nearest approach to a *direct* control over rates is the power of the board, upon application of the board of guardians or of any other

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officers competent to make and levy a rate, to order a new survey, in case it appears that a correct valuation cannot be made without it.

In the acquisition, management and disposal of public property the indirect control of the board is analogous to that just referred to. But there is a direct control of much more importance than the direct control over rates. Sanitary authorities must secure the consent of the board in order to purchase waterworks, or the right to take or convey water, or property for laying out new streets, or the powers and privileges of gas companies already formed; to levy tolls under the Markets and Fairs Clauses Act, 1847; to let lands; and to contract for the cleansing of streets. To purchase lands otherwise than by agreement or to supply gas where no company exists, a provisional order or an act of Parliament is necessary. County councils are subject to the same regulations as sanitary authorities regarding the purchase or acquisition of lands; and to alienate lands and buildings the approval of the board is required. In the latter case the proceeds must be applied as the board directs.

Parish councils, when desiring to purchase land otherwise than by agreement, need obtain the consent of the board only when the county council refuses to approve or when a memorial against the acquisition is presented. To render valid the sale or exchange of lands or buildings which have been acquired at the expense of any rate, or which are or may be so applied as to furnish an income, the approval of the board must be secured. Municipal corporations cannot purchase, mortgage or lease land (except for short terms), or convert it into sites for workingmen's dwellings, if the amount exceeds five acres, without the approval of the board, which may as usual impose such conditions as it deems proper. The appropriation of the proceeds of the sale of land or corporate stock, the transfer of annuities, the management of sinking funds and investments are subject to the same control. When the borough council acts as a sanitary authority, it is, of course, subject to the same restrictions as other sanitary authorities. Poor-law

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officers are under similar restrictions as to the construction, renting, enlargement of workhouses and pauper schools, and the purchase, sale or lease of property.

Beside the preceding, which affect the most important local authorities, there are scattered through the statutes various other provisions imposing restrictions. There are also other central authorities which possess more or less control. The great diversity in the details of the laws, however, precludes the formulation of any broad general principle to which they conform.

When one comes to consider the subject of loans, it is found that the board possesses powers of the widest application. The comprehensiveness of control can best be shown by giving a list of the purposes for which loans were approved during 1895–96. The terms used are to be given the widest possible meaning, for combination and abbreviation have here been carried as far as possible. Neither the size of the loan nor the length of the period of repayment makes any difference as to the power of the board to approve or disapprove.

The purposes for which district councils borrowed money included water supply, sewerage, sewage disposal, new streets, street improvement, public lighting, fire stations, engines and appliances, improvement of markets, slaughterhouses, yards, stables, offices, mortuaries, public parks, recreation grounds and other public conveniences, gas works, electric lighting, depots, hospitals, bridges, steam rollers, workmen's dwellings, winter gardens, urinals, hydrants, sea defenses, baths and washhouses, band stand, libraries, allotments, costs of provisional orders, technical instruction, *etc.* The number of loans was about 1600, and the total amount sanctioned over £6,100,000. Municipal corporations received consent to borrow for the improvement of bridges, markets, municipal buildings, lunatic asylums, lighting of town halls, improvement of estates and offices. In certain other instances, as for public libraries, baths, technical instruction and allotments, loans were also sanctioned; but it is difficult to say whether the borough council was then acting as an urban district council

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or a municipal authority. Poor-law authorities borrowed for purchasing or repairing workhouses, infirmaries, workhouse schools and for purchasing land the sum of £858,950. County councils received consent for the following purposes: bridges, improvement of main roads, highways, lunatic asylums, police buildings, county offices and buildings, technical instruction and repayment of loans. In all £472,428 were authorized to be borrowed in eighty-four loans. Parish councils, being of recent creation, are not thoroughly organized. The only purpose for which loans were sanctioned for them in 1895 was for "burial ground," and the entire amount of the six loans was £2665. All such loans, however, must be approved by the board (and the county council); and, as there are a number of "adoptive acts" which may be applied, the above figures will probably increase within the next few years.

It will be noticed that the only important local authority not mentioned above is the school board, but it is not exempt from central control. The Education Department must consent, before school boards may borrow upon the security of the school fund. Thus it is evident that, whenever a local authority wishes to borrow money upon the security of the rates or funds at its command, it must seek the approval of a central administrative authority, usually the Local Government Board. Recourse may be had to a local act giving power to negotiate loans without this approval, and formerly this alternative was much used and abused. About half of the total local indebtedness at present is due to these local acts; but the evils of this method of conferring powers have been recognized, and there is a strong tendency in Parliament either to require approval, even under a local act, or to refuse to pass the bill. At present local acts are rarely passed, unless the subject is one of unusual importance.

The reader will perceive at once that in many cases the Local Government Board possesses a double control. For example, consent must be secured to render valid the purchase of waterworks; and if the expense is to be met by a loan, the local authority is also obliged to secure approval as to the

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time and method of repayment. Doubtless this is perfectly proper, for the two acts are of a different character, and need separate consideration. If the expenditure is defrayed directly from the rates, this double control does not obtain; but practically it is very extensive, for the reason that the amount that can be raised by taxation is limited — not that the statutory limitations upon the amount that may be raised by rates are either numerous or very restrictive; but the dislike of heavy rates is as widespread and as strong in England as elsewhere, and, since the ratepayers constitute a large proportion of the electors, this feeling has considerable influence. Deferment of payment, if only for a few years, is a favorite method of dealing with local debts. Save where the amounts are so small that immediate cancellation will not heavily burden the rates, there is a strong temptation to shift all that can be shifted.

The method pursued by the board, when it is asked to approve a financial project, is to hold a local inquiry after giving ample notice. All who desire to attend or to be heard upon the subject may do so. The utmost publicity obtains; and the reports sent to the central authorities have very seldom, if ever, been made upon incomplete or inaccurate evidence. The inquiry is not confined to the advisability of the present loan, but often extends to the whole financial history of the authority and of the locality. The board ascertains whether its orders and the provisions of the statutes have been complied with, whether sinking funds have been provided, whether principal and interest have been paid regularly and promptly, whether the receipts from loans have been wisely and honestly expended. If the record is unsatisfactory, the board may condition its approval of the new loan upon the remedying of past defects, or it may refuse its sanction altogether. Approval may be withheld, moreover, should the board believe the proposed expenditure to be unnecessary, or the period of repayment unduly extended, or the estimates excessive, or the methods for repayment inadequate, or for any other reason whatever. In short, its power is supreme: there is no appeal from its decisions, not even to the courts, except as to questions of procedure. Its discretion-

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ary power has not been and, the courts say, will not be, interfered with.

There are some other ways in which the board may control local finances. It may authorize the Public Works Loan Commissioners to loan to local authorities, usually at lower rates and upon better terms than can be obtained in the general market. It may, after an official investigation, approve the securities issued by a local authority; and, if it does so, they cannot be impeached for informality or lack of power to issue them. Bonds of various kinds may be issued and placed upon the market, if approved by the board. Under the Public Works Loans Acts, 1875–82, the board is required to satisfy itself that all loans advanced by the commissioners to local authorities upon the security of rates have been applied to the objects for which they were secured. If it appears that this has not been done, the board may issue an order directing the necessary corrections to be made; and if it is not complied with, it may be enforced by *mandamus*. The board may also order unexpended balances to be remitted to the commissioners. Since 1873 local acts and provisional orders, with very few exceptions, have provided for returns to be made; and, if it appears that the provisions of the act relating to the loan have not been followed, the board may issue an order enforceable by *mandamus*. By the same means the board may enforce obedience to any of the conditions contained in the statutes or imposed by itself, relative to the numerous matters involved in the negotiation and repayment of loans, the issuing of stock or the management of sinking funds. Its powers are ample, both to obtain the information needed and to enforce its decisions; and, while it receives many returns and investigates numerous cases, it is not often that it is compelled to issue orders or apply for a *mandamus*. But all these provisions increase the control exercised by the board to no inconsiderable degree.

If central control ended here, there would remain many loopholes in the system. The misapplication of loans, the expenditure of sums for illegal purposes and the disregard of

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statutory regulations could be prevented only by the indirect means of refusing to approve further loans or applying for a writ of *mandamus*. But in the ample powers of the board regarding the audit of accounts the system of central administrative control over local finances is rounded out and completed. The board has power to appoint and remove as many district auditors as necessary, and to fix their salaries, subject to the approval of the Treasury. In 1896 there were thirty-eight auditors with salaries varying from £350 to £800—an ample, well-paid and thoroughly efficient force. All expenses are paid by the central government, but stamp duties are levied upon the local authorities to meet these expenditures. The board divides England and Wales into audit districts and assigns an auditor to each. The time and number of audits, the rules and regulations to be followed as to form and method of keeping accounts, and the number and kinds of reports to be made are matters determined by the board. The powers of the auditors are very broad. They audit the accounts of practically every authority empowered to raise money by local rating. The only important exception is the municipal borough, which has retained the right to choose its own auditors.

To obtain all the evidence needed, the auditors may call for all necessary papers and summon all persons connected with the collection, receipt or distribution of money or any documents, goods or chattels relating thereto. They may then disallow any illegal expenditure and surcharge the amount against the person responsible for its disbursement. In case any balance is due or any surcharge is not promptly paid, they may begin proceedings to force immediate payment. Illegal expenditures are defined very broadly, as being all payments, charges and allowances contrary to the provisions of the statutes or orders of the board or other central authorities, any custom or usage to the contrary notwithstanding.

Appeal from the decision of the auditor may be taken either to the Court of Queen's Bench, through a writ of *certiorari*, or to the Local Government Board. The former method has not been employed for many years. In case of appeal to the

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board, the expense is slight, the decision is prompt, and in very many cases, while the rulings of the auditors are confirmed, the disallowances and surcharges are remitted. It is these facts that have caused the judicial remedy to be neglected. The court must follow the law, but the board may give any decision it pleases. It is not bound to follow the law. It may confirm the decision of the auditor and remit the penalty, or confirm and not remit, or reverse and remit, or make what other disposal of the case it deems just and equitable. The decision of the board is final. A local authority may appeal to the board to sanction an expenditure before it is audited; and, if such sanction is given, the expenditure may not be disallowed by the auditor subsequently.

Through the powers already considered, the influence of the Local Government Board in promoting efficiency in local administration is enormous. But there are still more direct ways of compelling the enforcement of the laws. When complaint is made that a sanitary authority[1] is neglecting to perform a duty, the board may, after due inquiry, fix a limit of time within which the duty must be performed. If the local officer continues in default, the board may appoint a person to perform the duties, and all expenses must be borne by the locality. The board may, if it desires, sue out a writ of *mandamus* to compel rebellious authorities to act within the stated period. It may also authorize any police officer within a district having a negligent authority to institute proceedings for the abatement of nuisances. Besides these methods, the board may have recourse to the ordinary judicial remedies, and the application of any one does not bar the others. If a paid poor-law officer, for instance, has expended a sum illegally, he may be removed from office, the expenditure surcharged

[1] The great importance of the "sanitary authority" in English local government must never be forgotten. About half the total local indebtedness has been incurred by sanitary authorities, and nearly three-fourths of the rates levied are expended by them. They have control of the waterworks, the sewerage system, street cleaning, paving and improvement, public lighting, the fire department, parks and other public conveniences — in fact, almost all of the subjects usually associated with municipal authorities in our political system.

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and collected, and the ordinary judicial proceedings begun. In practice such a course is not usually followed, for the administrative remedies are generally sufficient.[1]

VI. *Quasi-Judicial Powers.*

Though the Local Government Board is properly an administrative authority, it has, as previously noted, functions that are legislative in character, and it also possesses powers that are very similar to those usually exercised by the judiciary. The functions of the board in considering appeals from the decisions of district auditors might be regarded as having a judicial character, but there are others more to the point. In case of dispute between the local authorities of different poor-law unions as to cost of relief, settlement, removal or chargeability of any poor, the board may, if appealed to by agreement of the parties, decide the matter; and the decision cannot be questioned, even in a court of law, unless carried to the Court of Queen's Bench within a short period. Again, when the overseers of a parish are aggrieved because of the apportionment of expenses for purposes of public health acts, they may appeal within twenty-one days, and the board has power to make and enforce "an equitable decision." Appeal is likewise permitted to any one who regards as unjust a decision declaring what expenses shall be private improvement expenses (similar to our local assessments), or any decision regarding expenses that may be recovered in a summary manner. The privilege has been extended so far as to include the case where the use of "a steam whistle or trumpet" for summoning or dismissing workmen, having been permitted by the local authority, has been complained of by the private citizen.

[1] Another method of central control of very limited application is to be found in the power of withholding the subsidy paid towards the support of medical officers and inspectors of nuisances, if returns and reports are not sent to the Local Government Board as required. The retention of the subsidy is not in the nature of a fine imposed upon the officer, for the expense falls upon the locality which he represents, and not upon the officer himself. It contributes something, however, towards preventing the selection of incompetent officers.

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In a second class of cases, where disputes arise and where there is no decision to appeal from, some department of the central government often acts as arbitrator or appoints a person to act. There are many instances in which other methods are provided; but under the public health acts, when each of the two disputing parties is empowered to select an arbitrator and these two to select a third, to prevent disagreement the Local Government Board is authorized to appoint the umpire. In other instances the board is itself the deciding authority — as, for example, in disputes relative to the boundaries of urban county districts or to the joint ownership of sewers.

It is to be noticed that in the exercise of the functions thus far considered the Local Government Board has relations only with local authorities. In no instance, except in case of officers in default, does the board deal with private individuals directly. There are, however, a few instances in which the board issues orders and superintends their execution without the mediation of local officers. Canal boats that are used also as dwelling houses, and salt works which give forth offensive and poisonous gases are thus regulated. But these instances are not numerous, and it is only in minor cases that the board does not depend upon local authorities, in the first instance, for the execution of statutes and orders.

VII. *Summary.*

Having reviewed the principal functions of the English Local Government Board, it is now possible briefly to state the characteristic features of the system; and in this statement the salient points of all local government in England will appear.

The starting point in the English system is Parliament; and, although there are no limitations upon its power, except those which are self-imposed, one should remember that Parliament has usually paid more respect to these self-imposed limitations than have our commonwealth legislatures to the limitations imposed

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by their constitutions. The position of Parliament as to the granting of powers to local authorities is midway between the Continental method and the American method. There is not the general grant in few terms so frequently found upon the Continent. Neither is there the minute specification and regulation by special legislation that prevail in all American commonwealths. In the early part of the century English conditions resembled very closely those at present existing in the United States; but the course the English have pursued has led them away from us, and towards the French and the Germans. The Continental countries, on the other hand, have lost much of their extreme centralization. Thus England and the Continent have been approaching a common ground; and while we have been making some progress towards central administrative control, it has been very slow, and the attainment of efficiency in administration has been correspondingly impeded.

It is true that the English statutes still enumerate the powers granted to local authorities; but the instances in which the power to perform certain acts has been granted unreservedly are much less numerous than formerly. In very many cases, the importance of which has been clearly shown, Parliament either has granted powers in very general terms, requiring central approval in each individual application of the power, or has authorized a central administrative department to confer powers. Without attempting to distinguish precisely between these two classes, one may fairly say that Parliament has adhered to its duty of prescribing general rules for the regulation of local authorities, leaving to administrative organs a free hand in questions of fact and of expediency. Special legislation dealing with such questions in local administration is not, indeed, unknown, but it is very rare. Just how far the granting of powers should be left to administrative authorities has been determined by experience for particular places and for particular subjects. This fact accounts for the apparently confused condition prevailing, and for the impossibility of discovering a precise, definite and universally applicable rule. To what extent experience has shown the need of central adminis-

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trative control it is the object of the foregoing paragraphs to indicate.

Another characteristic and striking feature of the English system is the plan of imposing upon the central authorities the duty of issuing orders to supplement the statutes. Under the old system of local self-government pure and simple, these details were either specified in the acts or left to the local authorities to fix for themselves. In either case the result was unsatisfactory. If the statutes specified every detail, great inconvenience and inefficiency in administration were produced; for different localities require different methods of applying the law. If full discretion was given to the local authorities, the greatest divergence arose where there was the greatest need of uniformity, and often the law was not applied at all. And, finally, in the search for a remedy for either of these classes of evils, Parliament was besieged for the enactment of local acts. Thus the last condition was usually worse than the first, for legislative interference knew no bounds. When central administrative authorities were introduced the problem was solved; but not all ordinance powers were conferred upon them — only those which experience had shown could not be well exercised by the local authorities. Where uniformity, a strong hand to enforce obedience, prompt action and superior ability are needed, it will usually be found that the ordinance power is possessed by the central authorities; while in other matters central approval alone is required.

As to local officers, it was found that none were appointed in first instance by the central government.[1] All are locally appointed or elected. The office may be established by a central authority, but the officer cannot be appointed unless the locality refuses to select one. Officials are responsible, however, not only to the locality or the local authorities, but to the central government as well; and if compliance with the law is not forthcoming, they may be removed and others appointed. The

[1] There are a few officers that might be called local, who are commissioned by the crown; but, as every one knows, no control is exercised through such appointment, which is chiefly a matter of form.

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execution of law is not left (in most important cases) to the will of the locality or of the individual, but is regarded as of national concern. It is this principle that makes the district auditor an agent of the central government and not a local officer. Self-government, in its true meaning, does not imply the right to say whether a law shall be enforced, although there are many who would like so to interpret it. A statute once enacted should be enforced, and it is a duty of the central government to see that its mandates are respected and obeyed. The auditor is an agent for this purpose, and can in no sense be called a local officer.

As to local finance, all important transactions must, as we have seen, be approved by a central authority. This plan was introduced to guard against the reckless extravagance that was to be feared in case of local independence, particularly where large powers were involved. Legislative control through local acts proved intolerably bad. Hence central administrative control was introduced as furnishing a means of restraint.

Compared with the first two periods in the history of English local government, the present shows great contrasts. The first period was one of complete centralization. In the second the pendulum swung to the other extreme — complete decentralization: what central control existed was legislative, and inefficient administration was seen upon every hand. Under such circumstances, while the benefits of self-government were recognized, it came to be felt that administrative centralization contained much to be admired and imitated, as well as much to be condemned and avoided. The problem was how to harmonize the two systems, so as to eliminate the objectionable features while still retaining the benefits of each. The solution, partly a result of reasoning from past experience and partly a result of conscious or unconscious imitation of the institutions of Continental countries, was a system in which central administrative control was the chief element. The effect of the introduction of this idea has been most marked, and the student of the relation between central and local government will hardly find a more fertile field than English local administration. We who

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have adhered so closely to legislative control will find there valuable suggestions for the solution of many serious problems which confront us.[1]

MILO R. MALTBIE.

NEW YORK CITY.

[1] Since the above was written, my attention has been called to several statements which convey the idea that there is a reaction against central administrative control in England and that the Local Government Acts of 1888 and 1894 have weakened the system. This error is due to a misconception of the fundamental principles of central administrative control and to an unwarranted confusion of these principles with centralized administration. Briefly, the distinction is that under the latter the central government or its agents actually perform administrative duties, as in the case of prisons; while under the former the officials are selected by the locality, and local initiative is at first relied upon, the government acting only when this has failed. In other words, it is *control*, not *administration*. In the light of these fundamental and almost universally accepted truths, it is not correct to say that the acts of 1888 and 1894 indicate a reaction against central administrative control and in favor of local independence. Certain functions have been decentralized, but central administrative authorities have been given considerable control over their exercise. In fact, the acts are in this respect entirely consistent with former acts; and while they have decentralized some matters, they have not weakened the system of central administrative control.

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ZOLA, DREYFUS AND THE FRENCH REPUBLIC.

IN the domain of politics, men are apt to be deceived as to the true meanings of distant things which bear familiar names. This is, as respects foreign affairs, peculiarly true of the people of the United States. In no other great country have so large a portion of the nominal leaders of public opinion neglected to inform themselves of the conditions which exist in other lands, and of the purposes and motives of the persons who govern those countries. Thus, we have been captivated by the cry of "home rule" for Ireland, because we have thought it meant only the same sort of local self-government that we exercise ourselves. The difficult problems involved in "home rule," and especially in the land question, have hardly been considered. Our general notion of land is, that it is property to be owned absolutely like any other; and when our rich countrymen undertake to carry that notion into practice in Great Britain, the hubbub they raise, is, if we think about it at all, merely puzzling to us. Again, the Russian fleet which visited New York in 1863 has beguiled two generations of Americans into a sentimental and baseless feeling about Russia, with which country, we have in reality, except in matter of size, less in common than we have with any other civilized country in the world.

In particular we are misled and influenced by the names of governments. If a country calls itself a republic, we think that it is republican; and if it calls itself a monarchy, we think that its people have less freedom, less equality before the law, less participation in the government, or less of some other good thing which we ourselves enjoy. This leads us into great errors. For example, the course of the late administration in reference to the boundary of Venezuela was apparently based on the notion that the Republic of Venezuela had a better or freer government than the colony of British Guiana, and that, as Mr. Olney said, its territory might be used "as a

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basis of military operations against us"; whereas the Republic of Venezuela is in fact an insolvent, revolutionary state, nearly as unlike our country as is Russia, while its northernmost point is two thousand miles from Brownsville, Texas, making it a "basis of military operations against us" that is indeed unique. About the same time Mr. Morgan proposed in the United States Senate a resolution congratulating the people of the Transvaal upon their success in "establishing free representative government, republican in form"; although the Transvaal is a theocratic oligarchy, such as this country has known nothing of since the seventeenth century. But perhaps the most lamentable result of this international misinformation is the state of mind of many of our people and newspapers about England. They talk and write as if the Great Britain of to-day were the Great Britain of Lord North; whereas in no country has the century wrought greater changes, so that the England of our time, though not republican in form, is actually a democracy, in many respects more perfect than our own.

Hitherto errors of this sort have not been important; but, now that we are beginning to feel that we have a more active part to play in the affairs of the world at large, everything which makes us see political or governmental questions as they are, without regard to their names, assumes a new significance. From this point of view, the first trial of Emil Zola, which was concluded in February, is a most interesting event, because of the light it throws upon the state of society, government and law in the great republic of France, the establishment of which we are accustomed to regard as one of the great triumphs of our own political theories.

The Zola case arose in this way. Three years ago, Albert Dreyfus, an Alsatian Jew, and a captain in the French army detailed for service at the headquarters of the general staff, was accused of having entered into correspondence with a foreign power (which, it has since been stated, was neither Italy nor Austria-Hungary) and of having sold to that power French military secrets. For some time prior to the arrest of Dreyfus on this charge, M. Drumont, editor of the *Libre Parole*, had

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been carrying on a violent anti-Semitic agitation through that paper. He took up the Dreyfus case in much the same way as the lost souls who conduct certain New York journals have taken up the Cuban question. He raved about the Jews in general, declared Dreyfus guilty, and asserted that there was danger that he would be acquitted through the influence of the potent *Juiverie*—"the cosmopolite syndicate which exploits France." Public opinion in Paris became much inflamed; and under these circumstances Dreyfus was brought to trial before a military court, found guilty, and condemned to be degraded and imprisoned for life in a penal settlement on an island off the coast of French Guiana. The sentence was executed with great harshness. According to report, Dreyfus is now living in a hut surrounded by an iron cage on the Isle du Diable; and, by a refinement of cruelty we can hardly conceive, is allowed to send and to receive only such letters as have been transcribed by one of his guardians, so that he may not even see his wife's handwriting. He denied and has never ceased to deny his guilt. The letters he wrote to his counsel after the trial, and after his public disgrace, are most pathetic assertions of his innocence and of the hope that ultimate justice will be done him. His family continue to deny his guilt and have used every influence to get his case reopened.

The secrecy of his trial, his own protestations, the insensate anti-Jewish feeling, and—more than all—the course of the government in respect to the affair, rendered inevitable the suspicion that there was something wrong about the case—that Dreyfus, being a Jew, had been used as a scapegoat for some one, and that he had been unjustly convicted. Among other eminent men, MM. Freycinet, Yves-Guyot, Trarieux, Waldeck Rousseau and Gabriel Monod—none of them Jews—advocated a revision of the sentence; while M. Scheurer-Kestner, a vice-president of the Senate and a man of high character, who had never known Dreyfus, declared positively that he had proofs of the latter's innocence and would insist on his rehabilitation. The matter was brought up in both chambers. The ministry affirmed that there was no "Dreyfus case." Gen-

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eral Billot, the Minister of War, declared: "On my soul and conscience as a soldier and as head of the army, I consider Dreyfus guilty." Thereupon in the Chamber of Deputies the house passed to the order of the day, declaring that it respected the authority of a *chose jugée*.

It was apparently thought that this action had disposed of the matter. Still the scandal would not down. The ministry published the so-called indictment of Dreyfus, from which it appeared that he was convicted mainly on the strength of a *bordereau*, an unsigned memorandum, which indicated that its author had sold weighty military secrets to a foreign government. It also appeared that on his trial, of the five calligraphic experts who had been called to prove the handwriting of this *bordereau*, only three had testified, after comparing it with the handwriting of Dreyfus, that he had written it.

The authorship of this paper was still further beclouded by a charge made by Matthieu Dreyfus, a brother of the captain, that a Major Esterhazy was really guilty of the treason of which Captain Dreyfus had been convicted. On this accusation Esterhazy was arrested, his lodgings and papers were ransacked for incriminating documents, and two mad letters written by him to a cousin were found. In them he expressed a wish that the Germans would conquer France, and in one of them he said that, beyond a certain point, the Germans "could throw away their swords and drive the French before them with their riding-whips." Esterhazy was tried, as Dreyfus had been, before a military court, which sat in part behind closed doors. So far as one can judge from the meagre reports that reached this country, the evidence that Esterhazy had written the *bordereau* was quite as strong as that it had been written by Dreyfus. Esterhazy was, however, acquitted; and, notwithstanding the letters just quoted, he was publicly congratulated and complimented by the president of the court — a performance which, considering the language of the letters, we could not have expected outside of Offenbach's Grand Duchy of Gerolstein.

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During the Esterhazy trial the insufficiency of the *bordereau* to convict anybody seems to have become apparent, and it was said that Dreyfus had confessed. This, however, was afterwards clearly enough disproved. Mention also began to be made of a secret document, which, though it had been shown to the judges of Dreyfus, he himself had not seen and his counsel had never even heard of till long afterwards. This document, "for reasons of state," could not be produced; and of its nature the world is still ignorant.

Such, in brief, was the Dreyfus case. Beyond doubt the French nation as a whole is convinced that Dreyfus was fairly tried and justly condemned; that those who have since questioned the justice of the proceeding are attacking the government and the army—that is, the state; and that in this attack they are probably controlled, or at least supported, by Jewish capitalists. It is equally beyond doubt that Dreyfus, whether innocent or guilty, was tried and convicted without what, in our sense of the words, is "due process of law." Every English-speaking person finds it revolting that a man, however base, can, after a secret trial, be consigned to a living death on evidence he had no chance to answer. We cannot comprehend how a people can be sane and tolerate a system under which there is the possibility that an individual may suffer horrible injustice "for reasons of state" or because his case is a *chose jugée*.

This view was adopted by Emil Zola, who, in an eloquent and powerful, though rather violent, letter to President Faure, reviewed the Dreyfus and Esterhazy cases, asserted the innocence of Dreyfus, and accused by name the president, the former minister of war and the chief of the general staff of suppressing evidence and of condemning a man on what they knew to be insufficient evidence. He appealed to the president, for the sake of his own fame and for the sake of France, to order a reopening of the Dreyfus case; and, anticipating a refusal, he invited a prosecution for defamation.

Zola was not an ideal figure to head such an attack as this on the French army and on the traditions and prejudices of France.

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His works on the working and middle classes, the church and the empire are not pleasant reading for anybody; and for a Frenchman they must, when taken together, constitute either a most unwelcome exposure of French society, or a gross libel on the French people. Zola is said to have been inspired to take his position in reference to Dreyfus by the letters of Victor Hugo on the execution of John Brown; but he is not above the suspicion of seeking a *réclame*, and the Prime Minister, Méline, thought fit to say in the Chamber that it may have been his object to prepare for a new edition of the *Débâcle*.[1] Yet whatever may be thought about Zola, it must be admitted that his stand, not for Israel but for justice, has been most gallantly taken, and he may give the world another proof of the truth of a saying of Dr. Arnold's, that "one man, with God, is a majority."

The effect of his letter was to raise at once a violent clamor, accompanied by street riots and demonstrations all over France against those who were supposed to be conducting "a campaign against the army"—for so it was that the demand for a revision of the Dreyfus case was interpreted. After a little delay the government, at the instance of the Count de Mun, promised to prosecute Zola. There is, be it noted, some significance in the fact that the initiative was taken by the Count de Mun. Himself once an army officer, always a devout Catholic, a man of the highest character, he is what the English would call a tory democrat, by order of the Holy Father — that is, he is a monarchist by conviction, who "rallied" to the republic after the Pope's letter advocating that course. An American may, however, be pardoned for thinking that the Count de Mun's ideas about government are distinctly mediæval. To him the state is not the aggregation of its citizens, but an entity — a little mystic perhaps — something above the community as an organization of individuals; and the army is not the servant but

[1] Probably the general feeling about Zola is well expressed in a conversation lately held in New York City. A Catholic priest asked a cultivated Jewess: "Was it not unfortunate the Jews had Zola for their champion?" She crushed him by asking in reply: "Was it not more unfortunate that the Christians had not provided a better one?"

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the incarnation of the state. Patriotism is, to such a mind, devotion to the visible embodiment of the state; and the Anglo-Saxon — or, better still, the Teutonic — consideration for liberty and justice for the individual sinks into insignificance before it. To the Count de Mun, therefore, Zola's passionate appeal for justice for one man as against the army authorities fell on deaf ears; and he, the representative of much that is best and most typical in France, was the fittest person to demand that the government take up Zola's challenge to prosecute him for defamation.

The promise was given. To the amazement, however, of men who do not understand the sacredness of a *chose jugée*, the mystery of reasons of state, or the possibility that millions of people could so far lose their heads as to imagine that a Jew syndicate had got possession of them, without knowing how or when, the government passed over all Zola's particular charges in reference to the Dreyfus trial and fastened on the following passages in his letter:

> A court-martial has just dared to acquit, by order, Esterhazy, which is a supreme slap given to truth and justice. And this is the end; France has that stain upon her face. History will write that such a social crime has been committed under your presidency. [The Dreyfus] court-martial might have been unintelligent; that of Esterhazy is forcibly criminal. I accuse the second court-martial of having covered that illegality, by order, in committing in its turn the judicial crime of consciously acquitting a criminal.

On these words alone the indictment of Zola was based. It was at once evident that the government did not intend to permit any discussion of the Dreyfus case and that the mystery was to be preserved at all hazards. This was emphasized by the refusal of the prime minister to produce a document which, it was said, would prove that Dreyfus had confessed — the ground for refusal being, of all reasons in the modern world, that the document would, if it were produced, become the subject of discussion! As the London *Times* said: "M. Méline once more laid down, amid the rapturous applause of the majority,

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doctrines which seem to us absolutely incompatible with the most elementary notions 'of right and justice.'"

The case of Zola came up for trial on February 7, 1898, and lasted for a fortnight. The court room was crowded with an enthusiastic audience, which appears to have behaved much like the audience in a Bowery theatre or a London music hall; and a company of republican guards was placed at the disposal of the court to ensure order. Zola entered the court-house amid cries of "*Conspuez Zola*"; and, while the indictment was being read, there were handed to him above four hundred telegrams and letters, from all over the world, congratulating or damning him. On the first day the court ruled that no evidence was to be offered except on the paragraphs of Zola's letter contained in the indictment, and passed a good deal of time reading letters from witnesses who had been summoned but had declined to testify. The next day the court decided to allow General Mercier and other officers to be summoned to testify, "subject to their right to plead professional secrecy." It disallowed most of the questions proposed to be put to Mme. Dreyfus; and to the proposal of Maître Labori, Zola's counsel, to ask Casimir Périer three most pertinent questions, replied: "You cannot attack the authority of the *chose jugée*." M. Scheurer-Kestner testified that Colonel Picquart, head of the secret-service bureau at the general staff, told him that he had discovered that Dreyfus was innocent; and Picquart and the witness had discussed the question how Dreyfus could be released and a great scandal avoided.

On the third day, General de Boisdeffre pleaded his professional secrecy, but explained that Colonel Picquart had been relieved from his position and sent to Tunis because his interest in the Dreyfus case had unfitted him for work. The general added that he knew Dreyfus was guilty, not only because a court-martial had convicted him, but from other facts — what they were he would not say; and General Mercier testified to like effect. Then Zola was allowed a turn, and M. Trarieux, an ex-minister of justice, made a long speech to the jury, stating his opinions and conjectures. Colonel du Paty de Clam — who at

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the Dreyfus trial based his belief in the guilt of the accused on the ground, among others, that Dreyfus's foot trembled when the witness went to surprise him in bed—followed, and said that he could tell everything which was not forbidden by professional secrecy, adding: "I have preserved the esteem of my chiefs and that is enough for me." General Pellieux then testified for twenty minutes, explaining why Picquart had been sent to Tunis, and saying that he had searched Picquart's papers, as the latter had had Esterhazy's papers for seven months. Then M. Thevenet, another ex-minister of justice, testified that in his opinion Zola had acted in perfect good faith. On February 11 Colonel Picquart testified as to his discovery of Dreyfus's innocence, and his own removal to Tunis, where all his letters were opened before he received them; he spoke without interruption for an hour, at the end of which time a lively and angry dialogue took place between him and Colonel Henry, another witness. Maître Damange, who had been Dreyfus's counsel before the court-martial, testified that he believed the Dreyfus judgment was illegal, because "M. Salle learned from a member of the court-martial that the judgment was null and void," on the ground, as he added in answer to M. Clémenceau, that there was a secret document. M. Jaurès, a deputy, then testified as to what he had heard said in the lobbies of the chamber by members of the staff of the *Libre Parole*.

On February 14 the proceedings were begun by the reading of a telegram from M. Papilland, who was in the country, denying what Jaurès had said about him at the previous session. Maître Labori then read an article from the *Libre Parole* saying that he, Labori, was only a naturalized Frenchman, that his father was a German, his mother an English Jewess, and his own wife the divorced wife of Pachman, a German who still visited his children at Labori's house; and, having read the article, the lawyer categorically denied the statements it contained. This incident deserves to be particularly considered. We cannot understand it. Nothing could better illustrate the danger of our endeavoring to estimate

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French institutions by our own standards. It is safe to say that the wildest imagination would not enable us to conceive that either Mr. James C. Carter, Sir Richard Webster or Mr. Joseph Choate could ever bring himself to open a session of an important trial in such a fashion!

On February 15 the event of the day was a long speech to the jury by Professor Grimaux, of the *École Polytechnique*, as a witness for Zola. He described why he had petitioned for a revision of Dreyfus's sentence, and how he had been intimidated by threats of dismissal; he recalled the military history of his own family, and "retired amid irrepressible applause." He had evidently impressed the jury; for the next day General Pellieux, the orator of the war office, reappeared and in a long speech testified in answer to Professor Grimaux and Jaurès, concluding as follows:

I have the soul of a soldier, which revolts at hearing the infamous aspersions showered upon us, and I can keep silence no longer. I cannot stand them trying to detach the army from its chiefs; for if the soldiers cease to have confidence in them, what will the chiefs do in the day of danger, which is, perhaps, nearer than people think? Then, gentlemen of the jury, your sons would be led to simple butchery.

Labori protested against some of the general's statements and proposed to question him. The court, however, repeatedly forbade Labori to proceed; but finally, the reports say, Labori's voice overpowered that of the president of the court. The next day Colonel Picquart contradicted Pellieux, and when he had finished, the latter's voice was heard solemnly answering Picquart on the spot. On the 18th, General de Boisdeffre entered the court amid cheers and said:

I confirm at every point the deposition of General de Pellieux. I have not another word to say. . . . You are the nation. If the nation has not confidence in the chiefs who are at the head of the army, who organize the national defenses, they are ready to leave the task to others, and now I have only to withdraw.

This was but an echo of General Pellieux's demand in behalf of the army for a conviction.

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Throughout the trial there were exciting scenes and interruptions by one side or the other, and there were many interjections, some of them too vainglorious for our taste, by Zola himself. Finally came the formal speeches, full of eloquence, and Zola's conviction.

It is not easy to make the narrative of the trial clear: Mark Twain is the only man competent to describe it. It was, however, plain that Zola had no evidence to offer, and relied on fishing among the government witnesses. His own conviction was therefore inevitable. What he did succeed in doing was to prove that Dreyfus had been convicted on a secret document, and to display to the whole world how justice is administered in France. In a speech delivered a few days after the trial M. Méline said: "Democratic justice had confirmed the verdict of the military court and the country would accept it." He added that "the agitation must now cease, that the government intended to impose peace upon all; and if the present laws were not sufficient they would ask for new ones." That speech was ordered to be placarded through the country; and at the same time Colonel Picquart was reduced in rank, while other witnesses for Zola were dismissed from their positions or otherwise punished.

Zola appealed to the Court of Cassation; that tribunal appointed one of its members to report on the trial; and, when it appeared to be probable that the verdict would be set aside, the Minister of War, Billot, is said to have threatened the court with dire consequences to themselves and to France if they so decided. Nevertheless, the court quashed the whole prosecution, on the ground that proceedings should have been instituted, not by the public prosecutor, but by the court-martial. It was at first supposed that the matter would be allowed to drop, but the court-martial decided to begin a new prosecution and also to proceed against Zola in the Legion of Honor. The prosecution was based this time only on the first two lines of the extract from Zola's letter quoted above. The trial was arranged to begin on May 23, at Versailles, and a strong judge was specially selected to preside.

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These new proceedings, like the former ones, appear to be sustained by public opinion. How is this to be explained? Here is the great corporation of the army shown to be outside of and practically above the civil laws. Here is one trial, in which the testimony was a most extraordinary mixture of fact, froth, inference, hearsay and conjecture, revealing how the safeguards of personal liberty, which have been embedded in the fundamental law of every English-speaking state since 1688, may, in France, be trampled upon and outraged; while the second trial seems to be inspired by some such blind and obdurate determination to carry its point, on the part of the army, as that which characterized the course of James II and brought about his destruction.

The truth is that, so far as the first trial was concerned, there was nothing in its revelations to shock the French people; for, though it is to us an amazing disclosure, it is to them only an exhibition of the ordinary criminal practice to which France, whether royal, imperial or republican, is accustomed. That is a surprising statement; but, as a matter of fact, there is, under the French criminal law, no such thing as the writ of *habeas corpus;* domiciliary visits are a common incident of criminal procedure; there is no fixed order of trial; and there is no law of evidence at all, in our sense of the term.[1] Witnesses are neither examined nor cross-examined by counsel, but all questions are asked by the presiding judge, to whom they may be suggested by counsel. The court, however, may or may not put those that are suggested; and it has the largest latitude in ordering the trial and examining the witnesses. There is no grand jury, but the functions usually assigned to that body are discharged by the *juge d'instruction*, who keeps a record of the proceedings before him; and this, called the *dossier*, serves as an indictment, which is handed to the trial judge, who studies it at his leisure.

The trial in the autumn of 1895, of a certain Marquis de Nayve, was a remarkable example of the possibilities of this

[1] "The French Law of Evidence," by Edmond Kelly. *Amer. Law Review*, XIX, 385.

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system. This marquis, who had had a violent quarrel with his wife and her spiritual director, was accused, nine years after the supposed crime, of having murdered his wife's illegitimate son by throwing him over the rocks near Naples. He was arrested, all his papers and effects were seized, and he was kept in close confinement and examined by the *juge d'instruction*, at the latter's convenience, for a period of seven months; finally, he was brought to trial and acquitted. During the period of his confinement he was without counsel or assistance, and was subjected to the most outrageous inquisition. Partly in consequence of this case, a law was enacted on the 12th of last November, which gives to every person accused of a crime the right to have counsel, and provides that his examination shall begin within twenty-four hours of the arrest.

What most strikes us about these trials is not that the law and practice differ radically from our own. This we may possibly regard as a minor matter, like the fact that, in Senator Morgan's free representative "republic" of the Transvaal, every voter must be a member of the African branch of the Dutch Reformed Church. What impresses us is the immense caste and racial feeling, which segregates the army from the people and puts it above the law, and sets the Jews almost outside of the law. It is this which causes us to wonder whether the French republic and ours belong in the same class, and are equally entitled to the name of republic. The exigencies of a standing army are of themselves not sufficient to explain the existence of such feelings; for, during the Zola trial, a socialist orator taunted the government with the Tausch trial then going on in Berlin, as an example of the pride of power they dared not emulate; and it is safe to say that Moltke could never have delivered himself as have generals Pellieux and Boisdeffre.

The prevalent idea of the nature of the state itself and of its identification with the army, can alone account for the attitude of the army. The French conception of the state, as has already been said, is not that of an aggregation of individuals, but that of a separate entity. It is Romanic and centralized, not Teutonic and individualistic. When the

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French cease to be monarchistic, their tendency is to become socialistic; but they look always to the centre, and their government, whatever name it bears, is always strongly centralized and despotic. Therefore, when, as now, the state is merged in the army, there can be no guaranty whatever of civil liberty.

A curious effect of this conception is the treatment of the President of the Republic as the visible head of the state. Some of that divinity which hedges a king is attached to the commercial coat of M. Félix Faure. He is as little free as the Czar; and compared with Mr. McKinley he is in utter bondage. Two years ago M. Faure was making a visit to the department of the Alpes Maritimes, and the writer had occasion to know something of the arrangements made for his reception. Every person who intended to call upon the President had to submit his name to the mayor of the town where the call was to take place; by him it was redirected to the prefect, and by the latter telegraphed to the minister of the interior. Every act of the President and the use of every moment of his time was prescribed by the minister. To such a point was this procedure carried, that, when Mr. Gladstone called upon M. Faure at Cannes, there was actually for a moment some doubt expressed as to what should be done about it. But some man in the presidential *entourage* — perhaps M. Faure himself — had sense enough to suggest that Gladstone had actually been the ruler of a friendly state and must, of course, be received, as he was.

This is but one illustration of what a vast, comprehensive and complex centralized machine is the government of France. It is, indeed, called a republic; but, after we have read of the Dreyfus case and the Zola trial, it can kindle no spark of fraternal sympathy in the heart of any genuine American. Among Jewish Americans, moreover, it is surely lawful for the Pharisees, if that sect still exists, to give thanks, when they think of the French Republic, that they are not as those men are.

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OFFICIAL TARIFF COMPARISONS.

IN dealing with the statistical interpretation of social movements too much labor cannot be expended in assuring correct methods. Unless the methods are above criticism, the results range from the imperfect to the mischievous, and no reasonable conclusion can be drawn from them. From this point of view it is with some diffidence that I approach the subject of "tariff comparisons"; for, although they are held in high estimation by many, there is in my mind no little doubt of their utility, as they are at present prepared and applied in debate. To justify such doubt, however, the development of the form used in these comparisons must be described.

One of the most important and lasting improvements in treasury administration was accomplished when Hon. David A. Wells, then special commissioner of the revenue, carried through the institution of a "Bureau of Statistics" in the treasury department. Since 1790 returns of trade — showing the import, export and tonnage movements — had been collected, and out of very crude beginnings a sort of system had been developed. These returns had, however, been made to the Register of the Treasury, an official charged with many other duties, and had not received the careful attention or studied development demanded by their importance. Whatever changes and extensions had been made in the course of nearly eighty years had been of a perfunctory order, and were merely surface recognitions of the needs of the commercial community, rather than added machinery for extending the records of the underlying factors in the foreign commerce of the United States. It was not recognized that, while in one sense the trade returns of a country are static, recording only the transactions of a given year, in another — and a more important — sense they are dynamic. As a matter of fact, by comparing the returns of one period with those of another, comparisons may be drawn, the nature of alterations may be noted, and the

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general trend may be indicated. The early returns were, therefore, defective; since they simply touched the few visible influences, without providing a general system for recording tendencies in such detail as to anticipate future developments.

It was when Mr. Wells created the bureau of statistics, charged with the controlling supervision of commercial returns, that the advantages of such specialization became apparent. A better arrangement of returns, a more careful and intelligent examination of each detail, and a great extension in scope and method were possibilities that began to be appreciated. In the late President Francis A. Walker, Mr. Wells found an able coadjutor; and to these workers is due the general direction given to the work of the bureau for many years. How much they accomplished is shown by the difficulty of going back of 1867 in the reports of "Commerce and Navigation" with any prospect of being able to place dependence upon the returns as printed, in any one line of import or export. So lax was the old system, and so much betterment was introduced into the new, that comparisons between the two are dangerous and more apt to mislead than to instruct.

Among the returns made to the Register was a statement of imports, arranged by principal articles and giving the amount of customs duties collected from each article. This return was regarded as a check upon customs receipts, but was never printed until 1862, when it was first included in the report on "Commerce and Navigation" of that year. How crude and imperfect the return was may be seen by referring to that volume. Only where the duty was specific was any detail offered; and even in such cases the record showed for each article only the quantity imported, but not the value. Where the duty was ad valorem, the value imported under each rate was lumped in one line. Thus, in 1862, more than $728,000 of merchandise paid a duty of five per cent; $1,119,000 paid ten per cent; and so on. No attempt was made to specify the different kinds of merchandise entering under those rates, and a single line sufficed to cover a great variety of articles. Only when a compound duty was imposed — specific and ad valorem

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— were both quantities and values given; but the compound duties were very few in number. From the return of 1862 the student could obtain the quantities of some imports, the quantities and values of others, and the duty paid where the duty rate was specific or compound.

So bald a system appeared to Mr. Delmar, the first head of the bureau, to be capable of some development. In 1867 the quantities (so far as they were obtainable) and the values of all imported articles mentioned in the tariff law were added to the returns, and this was a decided step in advance. The table was also given a distinctive title, which has since remained — "Foreign merchandise entering for consumption into the United States." It was thus assumed that dutiable articles would not be brought into the country and the duties paid, unless they were to be used in this country. The "general imports" represented not only those goods which were brought in for home use, but also such foreign commodities as were exported to foreign countries; but the "imports for consumption" were not exported again, as the high duties paid on them — averaging, in 1867, 46.67 per cent — would have destroyed any profit in such a venture. The latter constituted a return similar to the "special commerce" of European countries.

In 1868, at President Walker's initiative, the statement was again extended so as to approach more closely to the present form. If the quantity and the value of the imports of any article were known, by applying the rate of duty assessed under the tariff, whether specific, ad valorem or compound, the amount of duties paid was easily estimated. So far the statement was merely a compilation from official records. An addition of scientific importance might, however, have been made, in an attempt to measure by a common standard the proportion of the value of each import represented by the corresponding duty. In this way might have been shown the weight or burden of the various duties — something of importance in determining, what was at that time a much-discussed question, whether some articles were taxed extravagantly while others escaped their fair share of the burden.

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This application of scientific methods may best be shown by examples. That an ad valorem duty is based upon the value of an article does not require any proof. This simplicity disappears, however, when it is wished to determine what part of the value of the goods a specific duty involves. In such a case the quantity of the imports, as well as their value, must be known. Given these two factors, a simple division determines the value of a unit of quantity, — a pound, a yard, or a gallon, — and by dividing the rate of duty by this average value the ad valorem equivalent of the duty is found. Thus, in 1868 the imports of cheese were 1,586,030 pounds, valued at $219,976. The average value of a pound of cheese was, therefore, 14 cents; and a duty of 4 cents a pound represented a rate of 28.14 per cent ad valorem. A compound duty, moreover, involves a double calculation; and both the quantity and the value of the imports of the article concerned must be known. Thus, in 1868 cotton cloth, printed or bleached, was subject to a compound duty of 3½ cents per yard plus 10 per cent ad valorem. As a yard was worth 8 cents, the double duty amounted to a payment equal to 54.5 per cent on the value of the cloth. These two cases illustrate methods which could have been adopted in 1868 for reducing duties to a common measure, and for making comparisons based on the relation of the duties to the values of the imports. Such is the system at the present time.

A little consideration will, however, show that even these results are not above criticism. True, they are based upon actual transactions, and these transactions are subject to official verification. The foundation seems fair; and the resulting figures may be defended and may, within certain limits, be used with confidence. Yet destructive criticism of the method may be carried far. If the imports of any one article were entirely homogeneous, — representing the same quality, weight or texture, coming to this country under precisely similar conditions, — such an estimate of the weight of the duty would be nearly correct. If the goods were produced in the different exporting countries under the same conditions, and at the same cost — if, in other words, every economic element of production and

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transportation were exactly the same, no matter from what source of supply the commodity is derived, such estimates of the equivalent ad valorem duties would be scientifically correct and could be accepted without question. But these similar conditions are never present, except in the case of an absolute and rigidly localized monopoly, and are rarely present even then. In the imports of coffee in 1896, for example, the average value of a pound from Brazil was 13 cents; of one from Mexico, 17 cents; and of one from Java, 20 cents. A duty of 10 cents per pound would have been equivalent to 77 per cent on the Brazilian product, to about 60 per cent on the Mexican, and to only 50 per cent on the East Indian. Even these averages are not strictly correct, for the imports from each country represent thousands of transactions, no two of which may have been made under the same conditions.

It follows, therefore, that a uniform specific duty may involve very unequal burdens on different portions — which are apparently of the same nature — of the imports of a given article. This fact may be further illustrated by the imports of raw wools of the first class. The tariff law has introduced a classification of wools according to their uses, and the wools of class one include those known as "clothing wools." Paragraph 376 of the law of 1890 thus describes them:

> Class one, that is to say, Merino, Mestiza, Metz or Metis wools, or other wools of Merino blood, immediate or remote, down clothing wools and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two or three.

Here was an obvious intention to cover every form of Merino wools. In 1891, when a duty of 11 cents a pound was imposed on wools of this class, Australia was the great source of supply. Of a total importation of 29,528,790 pounds, 26,542,137 pounds were obtained from Australia, and only 1,632,000 pounds from British Africa; while Uruguay figured with 997,196 pounds

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and Argentina with only 357,457 pounds. In 1896, when no import duties were collected on wools, Australia gave 71,627,131 pounds; Argentina, 15,531,911 pounds; British Africa, 11,447,019 pounds; and Uruguay, 9,000,614 pounds. The great increase in the countries outside of Australia is explained by the incidence of the uniform duty before the law of 1894. The higher priced wools of Australia could pay the duty with advantage, while the cheaper wools of other countries found that it exerted a restrictive influence. With respect to all other goods subject to specific duties similar differences are found; and in every case they reduce, in just the same way, the value of any general estimate of ad valorem duties.

If the apparently simple enumerations are thus really complex, the confusion becomes all the greater when a large number of dissimilar commodities are thrown into a general class. Thus, when it is said that the duty on "all other manufactures" in any of the great classes equals a rate of so much per cent, the statement is true only when an ad valorem rate is actually imposed. Otherwise, even though the enumeration be carried out on the most minute scale, the estimate will be open to serious criticism. It gives only a general conception, and with every combination the conception becomes more general. Hence, where estimates are given by schedules, the error is aggravated. In 1893, for example, the average ad valorem duty on manufactures of wool was 98.55 per cent. But in the dozen or more classes enumerated under that schedule the rates varied from 60 per cent (on rags, mungo, shoddy, etc.) to 105 per cent (on plushes and pile fabrics); and if the discrimination be carried to the enumerated articles, the range of difference is still further increased. Thus, rags paid an ad valorem duty of 34.32 per cent, while the lowest description of yarns paid 278.66 per cent. The average of 98.55 per cent is, therefore, acceptable only as a vague generalization.

Even from year to year, the general averages are misleading, because each tariff law makes a different classification of dutiable articles. Before 1894, for example, flax and hemp, with the tow of flax and of hemp, were dutiable; and bagging

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for cotton, burlaps, and bags of burlaps were also subject to duty. Under the law of 1894 both these classes of goods — the manufactured as well as the unmanufactured — were freed from duties. In 1893 the average ad valorem rate of duty on the imports under the flax and hemp schedule was 11.70 per cent for unmanufactured fibres, and 39.13 per cent for the manufactured products; while in 1896 the average was 7.03 per cent in the one case, and 34.64 per cent in the other. A careless user of these figures for comparison might overlook the changes made from dutiable to free in both the raw and the manufactured material — a change that involved merchandise to the value of millions. It is, then, only in returns made under the same tariff law, if at all, that comparisons by schedules will hold.

The element of time must also be considered, for the direction of trade in any article may be materially changed in a few years. A good illustration is found in the increased importance since 1893 of the River Platte countries in supplying the United States with clothing wools; and a number of similar instances could be noted. Again, where the use of machinery is being rapidly extended to new countries, old relations are necessarily subject to change. Thus, in textile fabrics France and Germany now furnish commodities that were formerly obtained mainly from Great Britain, while the importation of silk and manufactures from Japan has developed almost entirely since 1875. In twenty years the channels of our foreign commerce have, therefore, been materially modified; and the most notable change has been towards more direct dealings with the countries of production. The consequent alterations in price, quality and quantity are reflected in the aggregated importations, and a general estimate of ad valorem duties cannot hold from one period to another.

Only where the importations are nearly homogeneous, or where a class is continued without change in its constituent elements, can the ad valorem duties be compared, one year with another. The more these characteristics are wanting, the greater is the danger in comparing the results.

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Thus far it has been assumed that this statement of ad valorem equivalents is used to record the actual commercial transactions of the customs houses. Within narrow limits such equivalents may be accepted, but at best they form very imperfect statistical data. There is, however, another use made of them — use as a basis for prophecy — which demands attention. If they are imperfect when dealing with actualities, what is their utility when applied to possibilities?

When Mr. Morrison framed his tariff bill of 1884, there was prepared a comparative statement, in which were shown the actual importations of each enumerated article in the fiscal year 1883, the actual amount of duties collected on each under the existing tariff act, and the amount of duties which would have been collected on the same imports under the proposed tariff. Since that time no tariff bill has been framed without its "comparative statement"; and, as House and Senate committees prepare separate statements, a collection of portentous size is needed by those who value tariff literature. These statements, which have grown in size and in elaboration until they now comprise a complete guide to the import record, are entirely based upon the "Imports for Consumption."

It is evident that in this use we have entered into a very wide field, where hypothesis forms the basis of the statements. So far as the ad valorem rate is concerned, it is assumed that the import of an article will remain unchanged in kind, price, value and origin; and on this assumption is based the further assumption that the revenue to be obtained from that article can be determined by applying the new rate to the (hypothetically) unchanged imports under the old. In such a sequence of assumptions there are involved so many factors, each of which may fluctuate independently of any other factor, that it is difficult to find any defense of the method pursued — a defense, that is, which can be formulated in accordance with the general procedure in statistical inquiry.

As a mathematical problem it may be asserted that an import duty of $5 on a horse worth $50 is a duty of ten per cent ad valorem. But suppose the value of the horse doubles or halves

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six months after the imposition of the new duty, what becomes of the "estimated ad valorem"? Or suppose there has been an import of 6000 head of such horses under a rate of $5 a head, while it is found that a new rate of $10 a head is so nearly prohibitory that the number falls to 500 horses in the first year of the operation of the new duty, how stands the estimate of revenue in the tariff statement and the actual experience under the law? The compiler of such a statement records that $30,000 were received in revenue in the year just elapsed, and then estimates that in the coming year, under the new rate, the revenue will be $60,000. In fact, it proves to be only $5000. As a means of estimating the revenue to be derived from a scheme of proposed duties the method is most misleading, for it fails to take into account the many new agencies which the new duty may call into activity. Whether a duty be raised or lowered, the result is the same. The effect cannot be predicted with such exactness as to merit unquestioning acceptance.

The same fallibility applies to the "estimated ad valorem" rates, based upon the new rate of duty, for any change in market conditions may so affect the price of the import as to leave the estimated per cent of duty without any foundation. In the great markets of to-day changes in prices, present and future, occur almost hourly; and the prices of one season may be revolutionized in the next. To base a calculation for twelve months hence upon so sensitive and variable a standard is to invite discredit.

If any further test of the want of scientific accuracy in the use of estimated ad valorem rates is needed, it may be found in the impossibility of expressing and measuring in them changes in legislation. Where the basis for imposing a duty is altered, past experience is without value in measuring the effect, unless the same basis has at some previous time been employed. Even where a former record is available, the time principle again interferes, since due allowance must be made for the new features which modern commerce so rapidly generates. These difficulties, moreover, seem to increase; for every new

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tariff act contains many changes in the basis of imposing the duties, the general plan being to enlarge the number of enumerated articles or classes to each of which a special rate of duty is assigned.

To illustrate this system, it is necessary only to refer to recent tariff acts. An example may be found in the schedules of cutlery. In the law of 1883 two paragraphs covered the imports of this class of goods:

197. Cutlery, not specially enumerated or provided for in this act, thirty-five per centum ad valorem.

207. Penknives, pocketknives, of all kinds, and razors, fifty per centum ad valorem.

Being ad valorem rates it was a simple matter to state what would be the weight of the duty. In the law of 1890, however, the cutlery paragraphs were expanded:

165. Penknives or pocketknives of all kinds, or parts thereof, and erasers, or parts thereof, wholly or partly manufactured, valued at not more than fifty cents per dozen, twelve cents per dozen; valued at more than fifty cents per dozen and not exceeding one dollar and fifty cents per dozen, fifty cents per dozen; valued at more than one dollar and fifty cents per dozen and not exceeding three dollars per dozen, one dollar per dozen; valued at more than three dollars per dozen, two dollars per dozen; and in addition thereto on all the above, fifty per centum ad valorem. Razors and razor blades, finished or unfinished, valued at less than four dollars per dozen, one dollar and seventy-five cents per dozen; and in addition thereto on all the above razors and razor blades, thirty per centum ad valorem.

176. Table knives, forks, steels, and all butchers', hunting, kitchen, bread, butter, vegetable, fruit, cheese, plumbers', painters', palette, and artists' knives of all sizes, finished or unfinished, valued at not more than one dollar per dozen pieces, ten cents per dozen; valued at more than one dollar and not more than two dollars, thirty-five cents per dozen; valued at more than two dollars and not more than three dollars, forty cents per dozen; valued at more than three dollars and not more than eight dollars, one dollar per dozen; valued at more than eight dollars, two dollars per dozen; and in addition upon all the above-named articles, thirty per centum ad valorem. All carving and cooks' knives and forks of all sizes, finished or unfinished,

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valued at not more than four dollars per dozen pieces, one dollar per dozen; valued at more than four dollars and not more than eight dollars, two dollars per dozen pieces; valued at more than eight dollars and not more than twelve dollars, three dollars per dozen pieces; valued at more than twelve dollars, five dollars per dozen pieces; and in addition upon all the above-named articles, thirty per centum ad valorem.

This introduced a system of specific duties, for the interpretation of which in terms ad valorem no returns existed. The "Comparative Statement" made no attempt to give an ad valorem equivalent of the new rates, but said merely, "It is evident that the rates are increased over the present, particularly to the extent of the proposed specific rates on knives." Yet on the same page a second note says, "The average of the proposed rates is believed to be not greatly in excess of existing ad valorem rates."

Let us now turn to the actual experience under these rates, bearing in mind that the old rates were 50 per cent on pocket-knives and razors, and 35 per cent on table knives, etc. The returns of 1893 will be taken, as they represent the full and free effect of the law of 1890.

	Actual ad valorem %
Penknives &c. valued at not more than 50 cts. per doz.	74.06
Valued over 50 cts. and not exceeding $1.50 per doz.	96.17
Valued over $1.50 and not exceeding $3 per doz.	94.74
Valued over $3	86.95
Table knives, forks, steels and all butchers', hunting, kitchen, bread, butter, vegetable, fruit, cheese, plumbers', painters', palette and artists' knives of all sizes, finished or unfinished —	
Valued at not more than $1 per dozen pieces	47.64
Valued at more than $1 and not more than $3 per dozen pieces	52.99
Valued at more than $2 and not more than $3 per dozen pieces	46.05
Valued at more than $3 and not more than $8 per dozen pieces	51.89
Valued at more than $8 per dozen pieces	48.73
All carving and cooks' knives and forks, of all sizes, finished or unfinished —	

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	Actual ad valorem %
Valued at not more than $4 per dozen pieces	74.46
Valued at more than $4 and not more than $8 per dozen pieces	60.97
Valued at more than $8 and not more than $12 per dozen pieces	59.83
Valued at more than $12 per dozen pieces	58.75

Here, then, the predictions of the comparative statement were proved to have been far out of the way.

In the Dingley bill the cutlery paragraphs were still further extended; thus:

153. Penknives or pocketknives, clasp knives, pruning knives, and budding knives of all kinds, or parts thereof, and erasers or manicure knives, or parts thereof, wholly or partly manufactured, valued at not more than forty cents per dozen, forty per centum ad valorem; valued at more than forty cents per dozen and not exceeding fifty cents per dozen, one cent per piece and forty per centum ad valorem; valued at more than fifty cents per dozen and not exceeding one dollar and twenty-five cents per dozen, five cents per piece and forty per centum ad valorem; valued at more than one dollar and twenty-five cents per dozen and not exceeding three dollars per dozen, ten cents per piece and forty per centum ad valorem; valued at more than three dollars per dozen, twenty cents per piece and forty per centum ad valorem: *Provided*, That blades, handles, or other parts of either or any of the foregoing articles, imported in any other manner than assembled in finished knives or erasers, shall be subject to no less rate of duty than herein provided for penknives, pocketknives, clasp knives, pruning knives, manicure knives, and erasers valued at more than fifty and not more than one dollar and fifty cents per dozen. Razors and razor blades, finished or unfinished, valued at less than one dollar and fifty cents per dozen, fifty cents per dozen and fifteen per centum ad valorem; valued at one dollar and fifty cents per dozen and less than three dollars per dozen, one dollar per dozen and fifteen per centum ad valorem; valued at three dollars per dozen or more, one dollar and seventy-five cents per dozen and twenty per centum ad valorem. Scissors and shears, and blades for the same, finished or unfinished, valued at not more than fifty cents per dozen, fifteen cents per dozen and fifteen per centum ad valorem; valued at more than fifty cents and not more than one dollar and seventy-five cents per dozen, fifty cents per dozen and fifteen per centum ad

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valorem; valued at more than one dollar and seventy-five cents per dozen, seventy-five cents per dozen and twenty-five per centum ad valorem.

155. Table, butchers', carving, cooks', hunting, kitchen, bread, butter, vegetable, fruit, cheese, plumbers', painters', palette, artists', and shoe knives, forks and steels, finished or unfinished, with handles of mother-of-pearl, shell or ivory, sixteen cents each; with handles of deer horn, twelve cents each; with handles of hard rubber, solid bone, celluloid or any pyroxyline material, five cents each; with handles of any other material than those above mentioned, one and one-half cents each, and in addition, on all the above articles, fifteen per centum ad valorem: *Provided*, That none of the above-named articles shall pay a less rate of duty than forty-five per centum ad valorem.

There was no importer, no customs official and no manufacturer who could give an idea of what these new duties would be when expressed ad valorem. This statement holds true, moreover, with every new gauge or measure introduced as a basis for imposing duties. This is a disadvantage inseparable from a "scientific tariff," in which the attempt is made to cover all possible combinations by specific rates applying to one of the elements of the combination. The committees which prepare the bill have command of the best available sources of information. The treasury returns are at hand, the accumulated knowledge and trained skill of the appraisers at the custom houses are utilized, and an immense mass of advice and information is received from manufacturers and importers — and even from the representatives, diplomatic and consular, of foreign countries, though this last source is rarely drawn upon. If, in the plenitude of this knowledge, the committees are unable to estimate the effect in per centum of a duty, the task may well be regarded as impossible.

From all these considerations it must be conceded that the so-called "Tariff Statements" are crude instruments, and that their conclusions should be accepted with great caution. In the hands of the inexpert they become misleading and mischievous. In no respect do they seem to be worth the time and labor expended in their preparation.

WASHINGTON, D. C. WORTHINGTON CHAUNCEY FORD.

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THE RESULTS OF THE GERMAN EXCHANGE ACT OF 1896.

THE German Exchange Act has now been in operation for more than a year. It is the most elaborate attempt ever made to regulate speculative markets, and as such is worthy of careful attention, especially in view of the demand for similar legislation in other countries. In the United States the "anti-option" movement has temporarily subsided, but its reappearance is probably only a matter of time. In France a similar agitation is making itself felt, and the ministry has already promised a commission of inquiry; while it is not improbable that a similar course will be followed in England. In these countries the agitation seems chiefly confined to speculation in food products. In Germany, however, the movement has been more far-reaching. The new act is not a single experiment, but a group of series of experiments which include at one point or another pretty much all the methods that have been suggested for the control of speculation. In considering the results of the act, I shall not attempt a systematic treatment of its main provisions,[1] but shall deal chiefly with the later developments in its operation, with special reference to the difference between German and American conditions.

I. General Character of the Exchange Act.

The immediate events that led to the enactment of the law were certain disastrous banking failures in Berlin in 1891, which involved excessive speculation and fraudulent treatment of clients. In 1892 a commission of inquiry was appointed by the imperial government, and was intrusted with a consideration of the whole subject of the Bourse. Despite objections that

[1] This has already been done for American readers in the admirable article by Dr. Ernst Loeb in the *Quarterly Journal of Economics* for July, 1897, to which reference may be made for details of the act not considered in this place.

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might be urged regarding the make-up of the commission and its methods of procedure, its report is an authoritative and impartial utterance, and the accompanying evidence constitutes the most valuable collection of information to be found regarding exchange business in Germany. The printed evidence covers 3600 folio columns, and includes the testimony of bankers, brokers, merchants, millers, manufacturers, lawyers, economists and journalists. Besides this mass of material, there is a considerable body of special reports and statistical collections.

The report of the commission appeared in 1893 and at once aroused great interest. Having been intrusted with the duty of making practical suggestions, to serve as a basis of legislation, the commission did not hesitate to recommend decided reforms. In its report the German readiness to provide government regulation and control was evident. Its suggestions were greeted by the opponents of the exchange as half-hearted and by its friends as useless interference. The attitude of the commission was, however, one of comparative moderation. Its recommendations aimed at a better organization and control of the exchanges, a diminution of speculation on the part of outsiders and a greater protection to the investor against the issuing of worthless securities. The commission recognized, however, that the development of a large body of dealings for future delivery is a normal incident of commercial evolution, that such dealings are necessary in modern commerce and that it is impossible to distinguish the desirable from the undesirable trading by any outward forms.

The relation of the act, as passed, to the proposals of the commission shows what tendencies furnished the real strength of the movement toward "reform." The bill as it came from the *Bundesrat* was more radical than that prepared by the commission, and made clear that the government was prepared to take steps toward meeting the demands of the Agrarians. Even these concessions, however, were useless to put off the war of extermination that was demanded by this party. In the *Reichstag* the Agrarians made an onslaught on the specula-

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tive system, and forced the government to accept proposals far more radical than it had been prepared to advocate. The chief of these was the prohibition of future trading in grain and in "industrial" securities. For the time being these radical clauses overshadowed in importance the rest of the act, which in many respects embodied the ideas of the commission. In fact, the original measure, which was chiefly devoted to the conditions of the Stock Exchange and was the result of an agitation caused by stock speculation, became in process of enactment more especially an attack on the Produce Exchange. The Agrarians cared much less about the Stock Exchange than about speculation in food products. It was this form of speculation which they believed to be especially injurious to their own interests. Their arguments were identical in thought and language with those of the anti-optionists in this country.

The act was passed June 22, 1896; but, with the exception of a few clauses, was not to go into effect until January 1, 1897. The act, however, was not complete in itself, but was to be supplemented by orders and rules issued by the different bodies which under the act were to exercise control over the exchanges. It is necessary, then, in the first place to consider the manner in which the new act divided this authority.[1]

The primary authority over the exchanges was placed in the hands of the state governments. These might, however, transfer the immediate supervision and control of each exchange to the chamber of commerce[2] of the municipality where the

[1] The principle of external control of exchanges was well established before the passage of this act. There was, however, no uniformity in the application of the principle; and outside of Prussia the control was indeed slight, resting as a rule in the hands of a semi-public organization of the merchant body in each locality. In Prussia, in addition to local control, the exchanges were all under the authority of the Minister of Trade. One of the good features of the act was the establishment of a uniform rule for the whole empire regarding the organization of the exchanges, though this uniformity may be partly counteracted by varying action on the part of local authorities.

[2] In every German city of any importance the merchant class is organized in a formal body, which receives special recognition from the government. The nature of these organizations is fixed by a general statute, which grants them certain privileges and imposes upon them certain duties of control in mercantile matters. They are thus at once organs of trade interests, and to some degree organs of

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exchange is situated. In any state where a minister of trade existed it was he who was to exercise the authority of the state government under the act, and this authority was to be in no way diminished on account of the part played by the local chambers of commerce. The state government, among other things, was required to issue or approve an ordinance for each exchange, and to appoint a commissioner for each exchange, who, as the representative of the government on the spot, was to be charged with the general duty of seeing that the law was enforced. By the side of this general power given to the state governments, reserve powers of importance were vested in the *Bundesrat*, which was empowered to exempt any exchange from the provisions regarding a state commissioner and from those regarding price quotations, and to regulate "future" dealings in particular commodities and the admission of securities to trading. To represent the *Bundesrat* in these matters, an Exchange Commission was provided, to consist of at least thirty members, elected in part from nominations by the chambers of commerce and in part representing agricultural and industrial interests. There was furthermore required for each exchange a commission charged solely with the question of admission of securities to trading. The organization of this commission was left by the act to be determined by the different exchange ordinances, and in Berlin the exchange ordinance turned the matter over to the *Aeltesten-Kollegium*.[1]

With this system it might be supposed that the exchanges would be left to elect their own officials without interference. But under the act the state governments have the right to provide for the representation of agricultural interests in the governing boards of produce exchanges. The Prussian government saw fit to exercise this right, and the ordinance for Berlin required that five representatives of agriculture and two representatives of the milling business should be appointed

public administration. These organizations are usually known as chambers of commerce (*Handelskammern*). The Berlin body is called the Merchant Corporation, and its authority is exercised through its *Aeltesten-Kollegium*, or College of Elders, to which frequent reference is made below.

[1] *Supra*, p. 286, note.

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by the ministers of agriculture and of trade and industry, respectively. As will be explained later, the secession of the produce dealers from the Berlin Exchange interrupted the carrying out of the project, but it may be well to illustrate the system of control by considering the situation in Berlin, as it would have been if acquiescence had been complete.

The Berlin Exchange is a single exchange with two departments, one for stocks and one for produce, and its governing board is a single body. Under the provisions of the act this body would have consisted of thirty-nine members — fifteen elected by the members of the exchange who deal in securities, nine by those who deal in produce, and eight by the *Aeltesten-Kollegium*, with five appointed by the Minister of Agriculture and two by the Minister of Trade. The exchange is, by its ancient organization, under the supervision of *Aeltesten-Kollegium;* by the late act it comes also under the supervision of the government commissioner, and is subject to the orders issued by the Minister of Trade. It is at the same time under the eye of the Exchange Commission representing the *Bundesrat*, while the *Bundesrat* may at any time issue orders affecting its most vital interests. Furthermore, all questions as to the admission of securities are subject to the judgment of still another separate commission. This extraordinary multiplication of authorities has been carried even farther by an order issued by the Prussian minister giving certain functions to still other officials — for Berlin to the president of the province of Brandenburg and the city of Berlin, and for other exchanges to the presidents of the provinces in which they are situated.

In accordance with the division of control, certain ordinances supplementary to the original act have been issued by the different authorities. The *Bundesrat* issued two in 1896, regarding the quotation of prices and the listing of securities; and the state governments have at various times issued both general orders and special regulations for individual exchanges.[1] Thus, the Minister of Trade and Industry issued an order for

[1] In general, it may be said that the Prussian government has gone beyond the governments of the other states in the severity of its regulations.

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Prussia November 14, 1896, and one for Berlin December 4; while very substantial changes were made by him in the regular rules of the Berlin Exchange, approved December 23, 1896. In this connection may be mentioned the enactment of a new law (the so-called *Depotgesetz*) in July, 1896, concerning the deposit of securities with brokers or bankers. This was passed as supplementary to the Exchange Act.

II. The Effect of the Act on the Produce Exchange.

The drastic measures against the Produce Exchange naturally absorbed public attention at the time when the law went into force, and it will be well to trace first the course of events that followed the prohibition of futures in grain.

Section 48 of the law defines "exchange dealings for future delivery" (*Börsentermingeschäfte*) in the case of securities or commodities as purchases for delivery at a certain fixed time or within a fixed period of time, when made according to trade rules adopted by the governing board of the exchange for future trading, and when for such transactions on the exchange in question there is an official determination of prices. And section 50 prohibits exchange dealings for future delivery in securities of mining and manufacturing companies and in grain and mill products. It also empowers the *Bundesrat* to forbid such dealings in any other commodity. What the outcome of this prohibition would be was a matter of much discussion and anxious anticipation. That the grain dealers would at once give up future trading was not to be expected, and the feeling was general that a new organization for informal trading would be formed.

Before the act went into effect a new question came into prominence. As already said, the Prussian government, acting under authority given in the act, decided to appoint representatives of agriculture and of the milling business to serve on the governing boards of the exchanges of Prussia. About the same time charges were publicly made by some of the Agrarians that false quotations for grain had been deliberately put

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out by certain exchanges, notably that of Halle. Such attacks on their honesty, combined with the determination of the government to force outsiders into the governing boards, roused the produce dealers to a high pitch of anger. They felt that the government was taking an attitude of hostile suspicion, and was appointing spies to insure honesty on the part of their elected officials. Up to this time the smaller exchanges had not looked with entire disfavor on the prohibition of futures, which it was hoped would drive some business from Berlin to the local "spot markets." These events, however, brought them into line in opposition to the government; and, in the last days of December, two or three of the smaller exchanges (Halle, Mannheim and others), rather than comply with the law, gave up their organization. In Berlin the action of the dealers was somewhat dramatic. Elections of the members of the governing board were to come off in December. The *Aeltesten-Kollegium* and the Stock Exchange each duly elected its quota to the board, but the produce dealers refused to elect. This left the Produce Exchange without organization. On the first day of January the grain dealers left the exchange building in a body, giving up all membership and privileges in the exchange, and proceeded to take up their quarters on the opposite corner in a variety theatre known as the Fairy Palace. This exodus was ostensibly a protest against the attempt to force the representatives of agricultural interests upon their board. On the following day the Stock Exchange adjourned to pay their seceding brethren a visit and to cheer heartily their course of action. Thus the appointees of the ministers were left without any presiding board to belong to and without anybody to preside over.

The new body organized in the Fairy Palace as the "Free Association of the Produce Exchange," which was an already existing body widened to meet the new exigencies. A reorganization soon took place, and the name "Free Association of Produce and Grain Dealers of Berlin" was adopted in order to avoid altogether the word "exchange." A vigorous press discussion followed these events. The exchange party talked

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much of injured honor and the maintenance of their independence. The Agrarian press held up the refusal of the grain dealers to admit agriculturists to their board as proof that they were afraid to have their true methods brought to light. In this discussion the main point, the question of future dealings, was temporarily obscured. Could such dealings be legally continued or not? It is not unfair to say that the agitation over the appointments to the boards was to some extent a mere pretext of the grain dealers for their secession, which was really carried out to enable them to continue their future dealings. The grain dealers maintained that their new dealings did not fall under the prohibition of the act. That prohibition was only of "exchange dealing for future delivery; while their trading, it was argued, did not constitute "exchange dealing." They were not organized as an exchange, there was no official determination of prices, and no use was made of the trade rules of the Produce Exchange. In fact, the printed contract forms adopted by the new organization contained the express declaration that the established usages of the grain trade were not there in force. All business was done under the general commercial law governing delivery on contracts. The established methods of settlement and clearing and other similar conveniences were given up, and the business reverted to the methods employed before a long period of speculation had perfected the market machinery. The object of this action was, of course, to avoid the prohibition as it was worded in the act.

Under these conditions business went merrily on. There had been stagnation and uncertainty at the close of the year, but, the Rubicon once crossed, courage somewhat revived. The press reporters were present to secure the (non-official) quotations for publication, and for some months business was carried on much as before. Grain was still bought and sold for future delivery, and the short sale was as common as ever. Yet some influence of the act was felt. In the first place, the cruder methods of business were naturally a check to expansion, while the uncertain nature of the whole proceeding kept outsiders from coming into the market as freely as before.

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The falling off in the amount of trade, however, was not greater than might occur through other causes during dull times.

In the meantime the first excitement quieted down, and a more moderate discussion was carried on in the press and by pamphlets as to the legality of the business of the Fairy Palace. There was apparently ample ground for difference of opinion. The question turned upon the definition of an "exchange." If the association of the Fairy Palace was not an exchange, its business did not fall within the prohibiting clause. Any definition of the word exchange was purposely omitted from the act, a fact that was at once recognized as furnishing plentiful material for a legal contest.[1] In any case the question was a purely legal one. That from the standpoint of economics the association constituted a grain exchange, was beyond question. But under German law an exchange had been supposed to exist under the approval and the control of the government, to have a semi-public nature and to perform a public function in providing an official determination and quotation of prices.

Under these uncertain conditions the government remained inactive. The Agrarian press grew increasingly bitter in its criticism of the government's unwillingness to enforce the law, and the opposition press delighted in goading them. In the Prussian *Landtag* the matter came to discussion several times, and the Minister of Trade was attacked equally by the two factions — by the Liberals for the surrender of the government to the Agrarians in the first instance, and by the Agrarians for the minister's failure to "enforce the law" and suppress the new organization. It was roundly asserted by the Agrarians that, if the new organization were continued, the law would prove a farce. In March the government commissioner on the Berlin Exchange advised the government that the Fairy Palace association was an exchange, but it was not till May

[1] For reasons not very easy to understand, the definition of "exchange trading" given in section 48 was not regarded as of importance in deciding the question at issue.

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that the government moved. In reply to an interpellation by the Agrarians, the Minister of Trade (von Brefeld) had expressed the uncertainty of the government on the point involved, and had finally announced his intention of taking such steps as would bring it into the courts for decision. Accordingly, May 11 the grain dealers were notified that, as the government deemed their organization an exchange, they were required by the act of 1896 to send in a set of regulations for the approval of the minister. This the grain dealers of course refused to do. Accordingly, June 11 the police authorities called upon them to give up at once their meetings in the Fairy Palace, on penalty of being put out by force. This at once put a stop to all trading. At last the full force of the law seemed about to be felt.[1] All speculation in grain for the moment ceased. What was to be the outcome?

The immediate results were probably not so startling as had been anticipated. In the first place, the Agrarians quickly found a new bugbear. It would be interesting to know what were the feelings of the Minister of Trade toward these gentlemen when, only two weeks after the closing of the Fairy Palace, he was again interpellated (June 25) regarding his failure to carry out the provisions of the act. The complaint this time was regarding the so-called Early Exchange (*Frühbörse*). This organization consisted of numerous small dealers who met regularly before the opening of the exchange, in a

[1] The later history of the police order closing the Fairy Palace is interesting. The Free Association entered complaint against the police authorities and the matter came before the administrative court (*Bezirksausschuss*) for adjudication. The arguments were such as suggested above. On November 20, 1897, the court gave its decision, to the effect that the Free Association did not constitute an exchange, and revoked the police order of May. The decision was based partly on technicalities of administrative law, partly on economic considerations. It is sufficient to note that great weight was given to the fact that no official quotation of prices had occurred under the Free Association and that the published prices had not been absolutely trustworthy. Thus again the official price-list was emphasized as an important element in the legal conception of an exchange. The court further decided that, even if the Free Association had been an exchange, the police had no authority to close it. An appeal has been taken to the higher court (*Oberverwaltungsgericht*), and its decision is awaited with great interest. The grain dealers, however, have not yet seen fit to reëstablish their former market.

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special room of the exchange building, for cash transactions in many kinds of produce. Being chiefly devoted to small dealings on a cash basis, it offered no parallel to the "curb-trading" in Chicago, which takes place before exchange hours. It was claimed, however, that the grain dealers had now come into this market and were using it for speculation. The minister explained the real nature of the market and declined to satisfy the Agrarian demands by suppressing it as an exchange. The incident is of importance only as showing the temper of the Agrarians, and because they have since repeatedly held up the *Frühbörse* as a proof of the half-hearted way in which the law has been enforced. As to the facts in the case, though some speculative trading may now take place in this market, it is of a "professional" nature and of little economic importance. The organization fulfils none of the functions of an exchange.

With the cessation of speculation, the grain business did not cease. Crops are grown and are consumed, whatever the particular machinery of the market. But the grain business entered upon a new phase, owing to the lack of a central quotation of prices. The exchange had furnished a market in which prices for all periods of delivery were fixed, and the local markets throughout Germany had naturally followed the central market in complete dependence. The exchange traders had loudly maintained that the abolishment of the central market would disorganize trade and make all grain business uncertain, because of diverse and fluctuating prices. The Agrarians had replied that they wished to make the local markets independent of Berlin speculation and so to fix prices according to "actual" conditions of supply and demand. They certainly accomplished their purpose, so far as destroying the predominance of the Berlin market was concerned. With the closing of the Fairy Palace the grain trade was deprived of all daily quotations that were of value for the whole country. The inconvenience of such a condition to the trading class is evident. The farmers themselves, moreover, soon felt the inconvenience. As the new crops began to

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come into the market, they were left to their own judgment regarding prices. There was no longer a daily exchange price by which to check all offers. The local higgling of producer and trader had full play. The course of events since then has been largely a series of efforts to replace the quotations of the speculative market by central quotations of another sort. In some cases local trade bodies, in other cases the local governments, have taken the initiative. Several flour exchanges (*Mehlbörsen*) have been organized in order to secure the publication of regular quotations. Similar action has been taken by two or three bakers' associations. The most important local price-lists published have been those of the local boards of agriculture (*Landwirthschaftskammern*) in different districts of Prussia.[1] The crying need, however, has been that of a central price-list to serve as a guide to the whole country. It has even been advocated in all seriousness that the government should establish a bureau to collect local quotations from all quarters and, on the basis of these, periodically to fix arbitrary central prices. The uselessness of such a policy is apparent.

A central bureau of the boards of agriculture was, however, finally established during the autumn of 1897 — not, to be sure, to fix prices arbitrarily, but to collect and publish uniformly the prices registered in actual transactions at many points. The bureau issues, accordingly, a price-list of three parts. First are given numberless quotations of local "spot" transactions over the whole kingdom. This formidable array of figures is of little value. The prices in each place are determined by local conditions, fluctuate in arbitrary fashion and indicate nothing to outsiders. They vary according to differences in quality (which are many) and according to the special terms of delivery in each contract. The second set of figures consists of prices at a few important markets — Berlin, Stettin, Danzig and others. These are quotations of actual sales and of definitely fixed qualities, and are meant in some way to supply the place of the earlier exchange quota-

[1] The *Polizei-Praesidium* of Brandenburg also issues a price-list.

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tions. For this purpose they are utterly inadequate. Prices, to be of more than local importance, must represent more than local conditions. In the prices of the speculative market all the changing conditions of demand and supply throughout the world are registered. It is the mistake of the Agrarians, and apparently also of the government, to imagine that they can abolish the exchange and yet maintain such quotations. A demand has been made by the Agrarian press and by boards of agriculture for the establishment of a large "spot" market in Berlin, and the government has declared its intention[1] to do all in its power to secure such an organization. But markets are not made by governmental decrees, nor can a mere traders' market have the influence of an exchange. Without speculation Berlin prices depend primarily on the conditions at that point alone and furnish no such guidance for other places as do prices determined by world conditions. Berlin prices now are only prices at which transactions *have been made*. They were formerly prices at which sales *might be made*. That is, the farmer or trader in the country was formerly sure of a market at the quoted price. He had only to telegraph his broker and the thing was done. The difference between these two kinds of prices can scarcely be exaggerated.

The third set of prices published by the central bureau consists of foreign prices. This list can be of only slight importance to the average producer. It is significant, however, of an important effect of the prohibition of future trading, namely, the increased importance to the grain trade of the foreign markets. Formerly the foreign influence acted directly on the Berlin Exchange, which set the price for the whole country. Besides the more careful observation of foreign prices, much German trade has now gone directly to foreign exchanges. In the first place, professional speculators, shut out at Berlin, transferred their operations, to a considerable extent, to Amsterdam and Budapest — and even, it is asserted, to Chicago. These dealings can be carried on by telegraph from Berlin;

[1] Von Brefeld, in the *Landtag*, January 25, 1898.

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the foreign brokers, however, get the commissions. In the next place, the large "hedging" transactions of grain dealers are now placed on foreign exchanges. Grain dealers everywhere now insure the greater part of their purchases by counter transactions on a speculative board. It was predicted that the new act would interfere with this process; but it may be said of the prohibition of futures, as it has been shrewdly said of the prohibition of the liquor traffic, that its success in one state is possible only through its non-existence in some neighboring state. The effect of this prohibition on the German grain trade would be far more disastrous were it not for the exchanges of Holland and Hungary. It is probable, however, that traders insure less regularly than when the Berlin market existed: that is, in many cases they carry their own risks. The margin between the buying price and the market price is, of course, widened to meet this risk. Under these conditions the advantages are all with the big grain houses. The small dealer finds his position precarious. It is asserted, and the statement is *a priori* reasonable, that the disturbed conditions make both dealers and millers more cautious in buying, and that this caution reacts to the disadvantage of the producer.

A very interesting question is that as to the general effect of a suppression of short selling on prices. The cry of the anti-optionist in all countries is that short selling is the chief cause of low prices. It was thought in some quarters that the German act would furnish a test of this theory, but unfortunately little light has been shed on the question. The prohibition of futures came at a time of rising prices throughout the world, but, in view of the activity of all exchanges outside of Germany, this rise can in no way be attributed to German legislation. The Liberal press in Berlin repeatedly declares that German prices have lagged far behind prices in foreign markets, and attributes this to the absence of the speculative demand at home. The Agrarians, however, maintain that German prices are always lower than foreign prices, but that the difference is less now than under the old system.

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In view of the great differences in grades of grain in the different markets, a difference exaggerated by the present conditions in Germany, any comparison of home and foreign prices is likely to prove misleading. It would be unwise to draw any general conclusions as to the relation between short selling and prices.

The existing conditions are satisfactory to neither side in the dispute. Several efforts have, therefore, been made toward a reconciliation. On July 10 there was a conference of representatives of the grain dealers, of the Merchant Corporation of Berlin and of the Brandenburg Board of Agriculture. Neither side was willing to make any concession. Again in November the Minister of Trade called a conference, in which, however, the grain dealers refused to participate. At this conference none of the Agrarians expressed a desire to have the act repealed, though there was criticism enough of the existing situation. As beneficial results of the act they claim that grain gambling by outsiders has diminished, that increased importance has been given to local "spot" markets and that prices are determined by local supply and demand, rather than by speculation. Their approval of the last feature, however, seems largely theoretical; for every attempt is being made to secure quotations of a more general value than those of the local markets. The Agrarians, in fact, while not satisfied, are not able (or willing) to trace any of their trouble to the provisions of the law. Their ire, then, is directed to what they deem the half-hearted action of the government.

In the first place, they complain that a more reliable determination of prices has not been introduced, and demand a compulsory declaration to some authorized body of every sale of grain, stating in each case the quality, conditions of transfer and price. One can hardly believe that the government will listen to a demand so antagonistic to private rights and so impossible of enforcement. Compulsory declaration (*Declarationszwang*) is, however, the slogan of the Agrarians in the press and in parliament; and one of their leaders, von Ploetz, has confidently predicted (in the *Landtag*, February 25, 1898) a

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majority for such a measure in the *Reichstag*. Their other chief demand is the suppression of such speculation as still continues. Reference has already been made to the charges against the Early Exchange in this regard, but a word should be said of a new development in the same direction. At the time of the closing of the Fairy Palace it was declared that, if the dealers were not to be permitted to meet for their trading, they would still carry it on "from office to office," by the use of the telephone or otherwise. Under such a method anything approaching the free speculation of the open board would be impossible. But an ingenious scheme was devised. An unoccupied hospital was secured, and there the dealers established offices in the adjoining booths. In this close proximity, and with a constant running about in the corridors, they are able to carry on a considerable trade, and yet claim to be dealing, not on any board, but in their private offices. This seems to add the only element necessary to give to the whole proceeding the air of opera bouffe. This establishment arose in the early fall (1897), before the decision of the court was given regarding the closing of the Fairy Palace. If that decision is sustained on the appeal, this trading "from office to office" will be unnecessary. In the meantime it serves as a convenient point of attack for the disappointed Agrarians. The government, however, declines to take any action in the matter till the final decision of the court fixes the legal position of such bodies. As a matter of fact, the establishment in question affords opportunity for the professional speculators to continue their business only on a small scale. It is far from supplying the place of an exchange or of the former assembly at the Fairy Palace. It has no controlling influence over prices and is of little importance in the real grain trade of the country. If, however, the appellate court decides in favor of the grain dealers, it may prove the starting point for the reëstablishment of the speculative market.[1]

[1] For lack of space it is impossible to discuss here the effect of the Exchange Act on the trade in other kinds of produce than grain and flour. The restrictions of the act, though not extending to a prohibition of futures, seem nevertheless to have cut into speculative dealings in coffee, sugar and cotton, and thus also into trade in the "actual commodity." It is well known that the establish-

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III. EFFECT OF THE ACT ON THE STOCK EXCHANGE.

Registration. — Before entering upon a discussion of the provisions of the act relating more specifically to the Stock Exchange, it may be well to consider the fate of the so-called "exchange register." The commission of inquiry, in its report of 1893, advocated the public registration of all persons dealing in futures on the Produce Exchange. The main object of this provision was to check speculation among the vast body of ill-equipped outsiders, who, for the most part, speculate secretly, and would be very unwilling to have their neighbors and those with whom they have business relations know of their operations. It was thought that publicity would keep a majority of this element out of the market. A small registration fee was recommended, both as an additional deterrent and, at the same time, as a possible source of revenue. The commission, for various reasons, thought such a register should apply only to dealers in produce, but the *Reichstag* went farther and provided a register for both the Produce Exchange and the Stock Exchange. Registration was not made obligatory, but it was enacted that a future contract between parties either of whom was not registered should not be valid or enforceable at law. It was further provided that, in the case of contracts between registered parties, neither party in default could plead an agreement of non-delivery in a defense of wager.[1]

At the last moment, after the provisions for registration had been agreed upon, the clause prohibiting all futures in grain was added to the act. Hence, in Berlin, the great grain mar-

ment of future trading in Havre in 1881 greatly increased the coffee business of that port at the expense of Hamburg. The latter city regained its position only by establishing a future trading system also. Now the report of the Hamburg produce clearing house (*Waarenliquidationskasse*) for 1897 asserts that in the first year of the new act both the real and the speculative coffee trade of Havre have greatly increased in proportion to that of Hamburg. The sugar trade is said to have suffered yet more.

[1] This clause was meant to simplify the legal status of contracts for future delivery in regard to the question of wager; but, if the considerable body of legal discussion over the exact meaning of this clause is any indication, the desired end can hardly be said to have been reached.

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ket, the register for produce dealers was a complete dead letter. No one would register himself as carrying on an unlawful business. In Hamburg, the centre for transactions in coffee and sugar, — commodities in which future trading is allowed, — the result was slightly different. The Produce Clearing House refused to deal with persons not registered; and, accordingly, ninety-two firms, including the leading houses, registered. The advocates of the register, however, had meant to have it reach the large body of outsiders; the registration of commission houses was not regarded as of any importance. But the outside public in Hamburg did not register at all. The Berlin Stock Exchange register proved a like fiasco. In the first year only sixty names were enrolled, and of these nineteen were not registered again (in November, 1897) for the second year. Only one name on the list was that of a private individual.[1]

The supporters of the idea of an exchange register — and they were many — were altogether at fault in attaching decisive importance to the legal validity of contracts in such a body as a stock exchange. What they failed to see was that fidelity in meeting engagements there is neither a matter of law nor even, as the brokers claimed, one of honor. It is a question of survival. Business cannot continue without it; hence the slightest deviation finds prompt punishment from the exchange itself. In this regard an incident of the Hamburg Exchange is worth noting. In July, 1897, a produce dealer, having lost on a transaction, refused to make good the contract, on the ground that he was not registered and that therefore the contract was not binding. This was an isolated instance of what the framers of the law expected to prove common in case of non-registration. But the law had also instituted an elaborate Court of Honor to act in matters of interest to the exchange.

[1] Some hard feeling was caused by the decision of the leading banks (those constituting the so-called *Stempel-Verein*) to register. The great majority of the brokers were strongly opposed to any concession to the vexatious rule and felt bitter at the action of the banks. These, however, argued that the interests of their customers were too important to permit of any risks; a desire was manifested also to convince the government that the *haute banque* was in all ways law abiding.

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That body promptly met and expelled the offending member for dishonorable conduct. The episode has its amusing side, in that one article of the statute created a body which is evidently destined to make another article inoperative.[1]

Membership. — To the American observer the most interesting feature of the exchange organization in Germany is the combination of the elaborate external control described above with a comparatively open membership. The question of the regulation of membership has figured prominently in the discussion over reform. The new act, however, makes few changes in existing conditions. It leaves the regulation of admission to the rules of the particular exchange, specifying, however, certain classes to be excluded from admission in any case. The excluded classes are women, bankrupts and offenders at law.[2] This restriction can hardly be called onerous. The rules of the Hamburg Exchange grant admission to "every respectable person of the male sex." Any stranger may go to the exchange and make such trades as his cash or credit permits. It is the great meeting-place of dealers in all sorts of commodities — of brokers, bankers, shipowners, underwriters and many others. An exporter receiving an order for a cargo of mixed goods for the Far East can contract for his various goods and for his ship, insure his cargo and sell his bills — all on the same exchange.[3]

[1] For an account of the Court of Honor and its functions, see the article by Dr. Loeb cited above, p. 286, note.

[2] To be exact, the third class consists of those who have lost their honorary civil rights (*ehrliche Bürgerrechte*). This occurs only through one's conviction of some offense punishable by imprisonment, and not even in all such cases. Furthermore, these rights are generally lost only for a specified time, after which the offender may again be eligible for admission to the exchange.

[3] Evidently the Hamburg Exchange is something more than an exchange in the strict sense of the word. This openness to all business, however, has not proved compatible with a large speculative trade; and in recent years various associations have been formed of the dealers especially interested in coffee or sugar or cotton or some other commodity. These associations hold separate meetings, where all dealings in futures take place, and outsiders can trade only through members of the association. Though admission to these associations is comparatively easy, they are a distinct beginning toward special exchanges with limited membership, similar to the American type.

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In Berlin admission to the exchange (including the right to transact business) is not entirely unrestricted, as in Hamburg, but still is very free. Not to enter into detail, it may be said that all members of the Merchant Corporation have a right to entrance cards without any payment, and that any other business man of standing can receive a card on complying with certain formalities and paying a nominal fee.[1] Moreover, clerks in the employ of any person entitled to membership receive cards at the request of the employer, but cannot trade on their own account.

During the discussion of reform measures, before the passage of the act, it was proposed in some quarters to elevate the general character of German exchanges by restricting the membership. The proposal, however, met great opposition, as tending to favor the wealthy firms at the expense of the small brokers and to increase the influence of the "money power."

Official Quotations. — Much greater attention is paid on the Continent than in the United States to the question of an official quotation of prices. It has already been pointed out that an official determination of prices apparently forms a necessary part in the legal conception of an exchange. That the enormous transactions of the Chicago Board of Trade, for example, should be carried on with no authoritative regulation of the price-list, seems inexplicable to one accustomed only to the usages of German exchanges. There are, however, some advantages in the German method; and the control of quotations is perhaps especially important where the practice of the broker acting as a principal toward his customer is highly developed. This practice will be explained in another place.

It is unnecessary to describe in detail the method of determining and quoting prices.[2] The method formerly differed

[1] Compare this with the price of a "seat" on the New York Stock Exchange, ranging from $18,000 to $30,000.

[2] In the case of cash dealings on the Berlin Stock Exchange there is an official *determination* of prices, which is something very different from a mere registration of sales in open market. For this interesting process, see Loeb, in the *Jahrbücher für Nationalökonomie u. Statistik*, 3d ser., Bd. xi; also references in the note at the end of the present article.

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somewhat on the different exchanges. As a rule, however, the control of prices was in the hands of a special class of brokers. These were the "sworn brokers," a survival of the time when all brokers were public officials under oath. The regulation of prices had been regarded as so distinctly a function of the broker class that, when the new class of "free brokers" began to increase in importance, this regulation was still reserved to the "sworn brokers." The new act nominally puts an end to the existence of the "sworn broker," but at once reinstates him under a new name as a "quotation broker" (*Kursmakler*). The members of this new class are officially appointed and are under oath.

The official price-list is controlled nominally by a committee appointed by the directors of the exchange, but actually by the quotation brokers. In making up the prices these brokers are obliged to consider only the contracts they make themselves. Other transactions may be considered at the discretion of the governing board. The quotation brokers are divided into groups, each concerned with certain specified securities, and no one of them can buy or sell securities outside of his specialities.[1]

Under any conditions, it might seem an imperfect method to leave the official price-list to be made up from transactions which may represent only a fraction of the total dealings in a given security; for the quotation brokers are not likely to secure a preponderating share of the trade in competition with the private brokers. But, to make matters worse, the new act itself, while establishing the class of quotation brokers in such an elaborate fashion, greatly interferes with the fulfilment of their function. This is one of its several similar inconsistencies. The act has increased in decided measure the volume of business done outside the exchanges, transfers being made in the banks themselves; and this has been partly at the expense of the quotation brokers. The more their business dwindles,

[1] It should be said that an official quotation is not obligatory. A security may be dealt in without being admitted to the official list. This, however, occurs rarely in the case of important securities.

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however, the less adequate it is as a basis for the determination of official prices. This consideration introduces the broader question of the relations of the banks to the exchange and to their customers.

Banks and Exchanges. — The great banking institutions in Germany stand in closer relation to the Stock Exchange than do banks in this country. This is largely due to their composite nature. A Berlin bank of the first rank, besides doing a regular deposit and discount business, deals "on 'change" on commission for a large body of clients, buys and sells great quantities of securities on its own account, underwrites and floats new issues, reorganizes old companies and promotes new ones, and may even buy up a company and carry on its business. It engages in every field of financial activity. A very large part of the commission business in the case of securities is in the hands of institutions of this nature. Consequently, the "stock brokers," the firms doing merely a commission business "on 'change," play no such important rôle in Berlin as in New York. They are overshadowed by the banks.

According to German law, the broker has in many cases the right to act as principal. Article 376 of the Commercial Code reads :

> In case of a commission for the purchase or sale of commodities, bills and securities that have a market or exchange price, the agent is authorized, when the principal has not otherwise ordered, himself to deliver as seller the goods which he was ordered to buy, or himself to take over as purchaser the goods which he was ordered to sell.

This right of entering into the transaction as principal (*Selbsteintrittsrecht*) in no way alters the agent's claim to commissions and costs. As an offset to such privileges, the agent (under the Code) had only to show that his price was the market price at the moment of sale. The chances for unfair treatment of the client under these conditions are obvious. In case the bank or broker already held the securities, the highest price for the day could be regularly charged. In case he bought in the open market and the price rose during the

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day, he could claim that the original purchase was for his own account, and then turn the securities over to his client at the higher price, making the amount of the difference (the so-called *Schnitt*) in addition to his commissions. Whatever the exact method adopted, the broker could evidently secure for himself all the advantages of fluctuations within the given time.

The new act attempts to make such action impossible. It does not change much the wording of the Code, but adds certain restrictions to it. The clause above quoted remains the same, except that in the case of securities the broker can act as principal only when there is an *officially* determined price for the security in question. The provision that the price should be the market price at the time of the transaction is supplemented by a clause fixing this time as the moment when the notice of the transaction is sent to the principal. By fixing an exact moment as the time of the transaction, a definite price is established at which the transfer must be made, and a choice from all the prices of the day is no longer allowed the broker. In case of delay in giving notice, no price higher than the closing price may be charged; and, where the order specifies the price of a particular moment (opening price, closing price, *etc.*), the transfer must be made at that price. A provision of great theoretical importance is that, in case to carry out the order a transaction is entered into with a third party, the client shall be charged no price higher than that of the transaction in question. If, then, the client's securities are purchased in open market, the broker cannot take advantage of a later change in price. Furthermore, where formerly, in absence of special notice, the assumption was that the agent was acting as principal, it is now provided that, unless the agent distinctly declares himself as the purchaser or seller, he is assumed by law to have made the transaction with a third party.

Closely connected with these provisions is the act of July 5, 1896, regulating the matter of securities deposited by customers. Formerly securities bought on margin and carried by the broker might be turned into the latter's general holdings and

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used by him to enlarge his own transactions. The customer had only (in practice) a general demand claim against his broker for a given quantity of the given securities. In this way it was possible for a broker on receiving a purchasing order to pretend to purchase, collect a carrying charge for securities which he did not hold and use the "margins" of the customer for speculative purposes of his own. Certain cases of gross misuse of deposited securities seemed to make legislation imperative. The act of July 5 requires that securities held in trust shall be kept in distinct parcels, marked with the name of the owner and used only on the owner's order.

This act and the provisions of the Exchange Act just considered were apparently wise measures for the control of unquestioned abuses. It is doubtful, however, whether the new legislation will have effects of great importance. In the first place, unscrupulous brokers can defy the law with little fear of detection. The provisions that control the broker in acting as principal will make his operations less easy, by fixing a definite price for his transaction with the customer; and, if there were only one customer to consider, the chances of fraud would be slight. The broker, however, is carrying out numerous orders at the same time, both selling and purchasing orders. To prove that any particular transaction on the exchange was in pursuance of any particular order is impossible; hence the price paid the third party cannot control the transaction. In the same way, if notice is sent the customer before the close of business, it is impossible to show just what was the price at the moment of notice, which by law is the price to be charged. With the ceaseless variations of the market, the exact time of any quotation is hard to determine. So in various ways an unscrupulous broker still has opportunity to speculate at the risk of his clients. It is too early to say what the actual result of the new legislation will be. It is stated by some persons well qualified to judge that the restrictions of the law have been sufficient to stop the practice of making a *Schnitt*. If this is so, there is no certainty that the practice will not be renewed as soon as the first fear of the law wears off.

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If we turn, in the next place, to the commission business of the large and honorable institutions, we find little change brought about by the new regulations, save perhaps a vexatious increase in book-keeping. The regulations were in the main already followed by them in practice. In many cases the securities of customers were kept separately and used only in the owner's transactions. So, too, the banks, when acting as principals toward their clients, completed the transactions at a fair market price, without attempting to make "the turn of the market" at the client's cost. Such action was never regarded as honest by the best institutions. Nevertheless, the provisions of the law are evaded so far as possible, to insure against any possible contests with clients; and thus the fair dealing of the banks depends not at all on the law, but solely on their own integrity. The act regarding deposited securities forbids any waiver of its provisions, except by special agreement in the case of each separate deposit. Consequently, the banks have inserted in all blank forms of contract the printed proviso that the provisions of the act are waived for that contract. By this simple change in the printed blanks the act of July 5 has been made a dead letter. In the same way the clause establishing a presumption that a commission order has been carried out by contract with a third party, unless notice to the contrary is given in advance, is made inoperative. The clause cannot, under the law, be directly waived, but the same thing is accomplished by a general statement from the bank to all customers that it in every case fulfils the order by acting as principal. This is made one of the trade rules (*Geschäftsbedingungen*) that every client must accept. In this way, so far as the legal nature of the transactions is concerned, every "commission order" is nothing but a contract of purchase or sale between the customer and the bank, both acting as principals. At law there is no "commission" about the business at all. There is, then, no longer any force to the provision regarding the price paid in the transaction with a third party, which was to control the price as between broker and client. The counter transactions made

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by the bank on the exchange are entirely distinct transactions, though of course determined in their amount and nature by their dealings (as principals) with their clients.

The final result is a curious one. The large banks receive large orders for the purchase and sale of securities, carry them out by themselves, selling to and buying from their customers at the market price, and in most cases make counter transactions on the exchange. This puts them into almost the same class as the London jobbers, and enables them to make a distinct jobbing profit. At the same time they pose as commission houses, and charge their customers with regular brokers' commissions and the "usual costs," such as interest and the stamp tax. If a customer puts in a buying order for the next "account," the bank, if it happens to own the securities, may transfer them to the customer, charge him with commission and "costs," charge him further for carrying the securities and buy back the securities (perhaps at a profit) when he wishes to sell, again charging him with commission.

A very interesting result of these practices is the development of the banks as independent markets for securities. With the great number of their customers in this field, they naturally receive very many buying orders and selling orders that exactly correspond. By acting as principal in every case the bank can offset all such orders without dealing on the exchange at all. Further, the bank is probably an underwriter of several new issues and prepared to furnish these to all buyers. It can also use its own large holdings of securities, in temporarily meeting buying orders for which there are no corresponding selling orders, or in the opposite case can add to its holdings without inconvenience. In this way an increasing volume of business is being done outside the exchange, and this is greatly stimulated by the restrictions the new legislation puts on exchange trading. The exchange in so far declines in importance, and the large banks through whom all this business goes become increasingly influential. The banks still have counter transactions of great extent to make in open market; but these, though determined by the orders received

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from customers, are also influenced by the operations of the banks themselves. The market becomes increasingly a bankers' market, and the influence of a large part of the outside public is felt only indirectly through them. The meaning of the reference above made to the small transactions that serve as a basis for the official quotations is now clearer. As the banks do not employ brokers to any great extent, their large transactions are perhaps not directly considered in making up the prices. The quotation brokers (and all private brokers, for that matter) complain bitterly of the falling off in their own business, due to the large transfers which the banks make in themselves (*in sich*).

Admission of Securities. — Closely connected with the questions involved in the above condition of affairs are the provisions of the new act regarding the admission of securities to exchange trading. These provisions are devised for the better protection of the public against unsound securities, with which the market is being constantly flooded. The first innovation is the provision prescribing for each exchange a commission on listings, one half of which shall consist of members not entered in the Stock Exchange register. The object in view was to have half the members of the commission unconnected with dealings in securities, and hence (presumably) more disinterested. Since the exchange register, however, has proved a farce, this object is not attained under the wording of the statute. It is the duty of this commission to demand from applicants for listing the information necessary to an intelligent opinion on the investment, and to see that the facts are put at the disposal of the public. The commission is not supposed in any way to affirm the soundness of an undertaking by granting it a place on the list, but merely to secure an honest statement of conditions from which the investor may form his own judgment. The policy here involved has been the subject of much discussion since it was first taken up by the commission of 1893. Certain extremists advocated a government commission that should pass judgment on the desirability of investments offered to the public. It is not difficult to see the evils that would

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result from any such official recommendation. The action of even such a commission as is now provided is likely at times to prove misleading to the public.

The act provides for the issue of a prospectus by every applicant for listing, the character of which has been prescribed in minute detail by the *Bundesrat* in its order of December 11, 1896. A prospectus, as now issued, is a formidable document and fills a large amount of newspaper space. The public has, however, never been accustomed to pay much attention to such statements; and it is to be feared that the formidable dimensions of a prospectus under the new requirements will discourage independent investigation, and will merely confirm the natural tendency of the outsiders to "follow their leader."

The protection of the public was further considered in increasing the responsibility of any house putting new securities on the market. Formerly the responsibility fell chiefly on the promoters who framed the prospectus. Now, in case of false statements or a suppression of facts, either purposely or through gross negligence, the underwriters who float the issue are jointly liable with the original promoters. In case of a fall in the price of the security (such fraud or negligence being proved), an action may be maintained against either party to recover the difference between the existing price and the price of the plaintiff's purchase or that at which the issue was first put on the market.

It is too early to tell what the results of these efforts at reform will be, but there is reason to hope that they will prove of real value. Though in some respects they impose vexatious requirements to little purpose, on the whole they constitute a distinct step in the right direction, and have received the support of not a few of those who strongly opposed the act as a whole.[1] The Liberal press is not prone to criticise the government for undue leniency in enforcing any part of the law; but the action of the Prussian government in exempting

[1] At a conference of the various committees on listing (*Zulassungsstellen*) held in Berlin in November, 1897, it seemed to be the general opinion that the contents of a prospectus under the new law are too complicated and include too many unimportant details to serve their real purpose.

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certain mortgage banks from the requirements regarding a prospectus (which under the act it is entitled to do) has called out severe criticism from this quarter.[1]

Another important clause in this part of the act provides that, in case of the transformation of an existing business into a stock company, its securities shall not be admitted to trading until it has been in business one year in its corporate form, and has made public a statement for the year. This provision also was framed with a view to the protection of the investor, though it is hard to see why the formation of a stock company to carry on an established business should be more dangerous than the formation of such a company to begin a new business. The first result of this clause was great activity in the formation of new companies before the date at which it was to go into effect, July 1, 1896. In the first half of 1896 a large number of industrial concerns were changed into stock companies and their securities listed. Since then, in view of the new restrictions, the number has been small. It may be difficult for even an honest and solvent company to run its business a year without getting its securities on the market. As the restrictions of the law do not apply to an additional issue of a stock already listed, the tendency is for such concerns to become absorbed in existing companies, rather than maintain an independent existence. When an established house is changed into a stock company, it can turn its securities over to a company already in the field; and these securities may be met through an increased issue by the old company of stock which can be brought into the market at once. These arrangements are made largely through the banks, which more and more are finding a lucrative field in the development of industrial undertakings on a large scale and in the ceaseless amalgamation of such companies. The restrictions of the Exchange Act have given an added impetus to industrial concentration, and not least in its influence has been the clause requiring a year's delay in the listing of the securities mentioned.

A less important, but more striking, effect of this clause was

[1] See the *Frankfurter Zeitung*, February 18 and March 4, 1898.

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the formation, before the act went into effect, of companies especially designed to take over the securities of such concerns as came under its restrictions. In some cases these companies were confined to particular fields of enterprise, as "general electric" companies and the like. A more extreme type is illustrated by a Dresden corporation known as the Stock Company for General Industrial Purposes (*Aktiengesellschaft für allgemeine Industrie*). These companies increase their own stock, in proportion to the securities taken over by them, and put this stock on the market at once. In this respect they have some of the features of a trust. The new issues are not trust certificates, but they represent securities of separate companies, and form an object of speculation in their stead.

Dealing for the Account.—Finally, we may consider the workings of the clause prohibiting all exchange dealing "for the account" in certain classes of securities. The results of this clause are none the less interesting for having been confidently anticipated by every one at all familiar with the nature of exchange transactions. Prior to the act, business on the German stock exchanges had been conducted according to London rather than New York methods. The difference is familiar. In New York "futures" are practically unknown on the Stock Exchange. Almost all transactions are for delivery on the day following the contract. Speculative buyers who are unwilling to take the securities over for cash provide for their being "carried" at a fixed carrying charge. Short sellers, conversely, borrow their stocks for the next day's delivery. In many cases, of course, this amounts to the same thing: that is, those who have bought and are not ready to take over the securities loan them to the short sellers for the deliveries which they are bound to make. Settlements and clearings occur daily, and loan contracts run indefinitely from day to day. In London, on the other hand, transactions are "for the account"—that is, for the fortnightly clearing. In Berlin the methods are the same, except that for most securities the account is at the end of the month. Transactions are said to be *pro ultimo*. These are distinctly time dealings. The Berlin operator may speculate

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on the fluctuations of a month and wind up his transaction before the monthly settlement, in the same way in which the New York dealer can speculate on the ups and downs of a single day. Such contracts are like the "futures" of the Produce Exchange, except that the time of delivery is fixed for a specific day.

Such being the conditions of business, the act forbids all "exchange dealing for the account" in the case of securities of mining and manufacturing undertakings, and in all cases where the total capital stock is less than 20,000,000 marks. The question of the need of speculative dealings in securities of a smaller total than this need not be raised at this point. This attempt to prohibit time dealings in industrial securities is a radical step. It rests upon the belief that speculation in such shares does not serve the same economic purpose as speculation in (say) public funds, and also upon certain experiences in the manipulation of these securities not unlike our own experiences with "industrials." To overcome the prohibition of the clause in question, two ways were open. In the first place, the question as to what constituted *exchange dealing* for future delivery was as indeterminate as in the case of grain; and, following the lead of the grain dealers, "trading for the account" might have been arranged with a view to avoid its classification as *exchange* trading. This would have involved giving up the existing rules, the machinery of clearing and the official quotation of prices. But for the Stock Exchange a much easier way was open. Instead of avoiding *exchange* trading, it was far more convenient to avoid *future* trading. This was accordingly done, and a system of cash trading in the specified securities was substituted for the previous transactions "for the account." It was well understood before the act went into effect that a policy of this kind would be adopted. The report of the commission of inquiry some years before had emphasized the fact that speculation in securities does not depend upon the method of dealing for future delivery, and that the New York Exchange furnishes an example of speculation on an enormous scale without time dealings. Hence the commission had declared

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impracticable the prohibition of time dealings in any class of securities. The *Reichstag*, however, was blind to such obvious facts.

Before the act went into effect the brokers' companies (*Maklerbanken*) [1] and the leading banks had arranged a definite policy, and had sent to their customers printed regulations regarding the new form of trade in industrial securities. It was announced that customers might place orders for cash purchases or sales, and that the securities would be carried for the purchaser's account, or securities provided for him if he had none for delivery. All settlements were to be made at the end of the month. Of course interest charges for carrying have now to be reckoned into the account. It is worth noting that it is provided by many of the banks that, where there is an interest charge against the customers, it shall be one per cent above the prevailing bank rate; and where the interest is in the customer's favor, it shall be one per cent below the bank rate.

The new arrangement is evidently like the New York method in principle. It works, however, very differently in some respects. Since the banks fill every order by acting as principals, there is no necessity for such active borrowing of stocks and money as follows the close of each day's trading in New York. The customer who sells short, for example, is merely debited with the given amount of stock on the books of the bank. The bank, with its large body of customers, will generally find such a sale offset on its books by a corresponding purchase. Such balances as remain, which the bank does not wish to carry itself, will determine its counter transactions on the exchange.

Thus the provisions of the act that aimed at the suppression of speculation in an important class of securities have suc-

[1] The *Maklerbanken* are stock companies that enter into relation with free brokers and guarantee their contracts. A broker connected with such an organization brings purchaser and seller together only through the medium of the *Maklerbank*. If he receives an order to buy, he at once fills the order by giving up the *Maklerbank* as seller, and only then does he secure a selling order, whereupon he gives up the *Maklerbank* in turn as buyer. The broker has the benefit of improved credit, and the *Maklerbank* makes its profit from a division of the commissions.

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ceeded only in changing the form of that speculation.[1] Doubtless in some cases the speculation has diminished, since as yet the public is not used to the new procedure. It also works to the disadvantage of the customer. How far any inconvenience will be felt in the future, it is too early to say; but it may be confidently asserted that, if economic conditions demand an increase in the issues of "industrials," there is nothing in the present arrangement to check an active speculation in such securities. As it is, trust certificates do not come within the limitations of the law. A test case was made of the Dynamite Trust, which claimed to be not a "manufacturing company," but merely an organization for the ownership of securities of manufacturing companies. This claim was allowed by the governing board of the exchange in Berlin, and trading by the old method continued.

The ultimate results of the Exchange Act cannot yet be determined, but its immediate results are sorry enough. It aimed to stop speculation in grain; and in the effort to do so it has disorganized the grain trade, increased the risks of all dealers, deprived farmers of reliable central quotations, driven business to foreign exchanges, diminished the importance of Germany in the grain markets of the world and — last but not least — engendered bitterness and strife between different elements of society that may affect political issues for years to come. All this might have been worth while, if it had been accompanied by the suppression of the gambling propensities of any considerable proportion of the population. But of the former outside speculators on the Berlin Exchange, some have trans-

[1] It seems to be the general opinion in Germany that the substitution of cash dealings for time dealings will always bring about an increase in the width of price fluctuations. It is said that this has resulted in the present case. Loeb (in the *Quarterly Journal of Economics*, 1897, p. 423) gives as two reasons for this the smaller amount of the transactions and the absence of a strong short interest to maintain prices on a fall. This doubtless applies in the case of a cash business that is unfamiliar to the public and unperfected in its workings, as is the case in Berlin, but it is not inherent in the form of cash trading. The dealings of this nature in New York are enormous, and the shorts have the same steadying influence there as under a system of time dealings.

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ferred their dealings to foreign markets, some find an opportunity still open in the new hospital exchange, some have turned their attention to the Stock Exchange, while others doubtless find consolation in "playing" the state lottery or in other devices for the gratification of the gambling instinct. It would be unfair not to credit the law with some check on gaming transactions, but it would be unwarranted optimism to think that the partial suppression of merely one form of gambling can be very far-reaching in its moral results.

When we turn to the Stock Exchange we find little reason to believe that the outside public has diminished its operations. Where speculation has been made difficult at one point, it has increased at another. The recently published bank reports for the year 1897 show a material gain over 1896 in the earnings of the large banks from commissions. Against this should be put a probable loss on the part of the smaller brokers.

Looking at other provisions regarding the Stock Exchange, we find many harmless regulations and some desirable ones. Those, however, from which the most good was expected have shown themselves of little use. The exchange register is a farce, the prohibition of futures in industrial shares is completely evaded, the regulation of the commission business is incapable of enforcement, and so on. The most important net result of it all is the way in which the whole scheme plays into the hands of the large banks. This fact is reiterated in every financial letter and every bank report. The provisions chiefly responsible for this have been described above. They only accentuate a movement already very marked, and one fraught with great advantage as well as with grave dangers. But it is a strange commentary on this class of legislation that such provisions as those regarding the listing of securities, commission dealings and the trade in industrial shares should have been passed by a legislative majority that was actuated by suspicion and hostility toward the "money power."

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Bibliographical Note.

The basis of all discussion of exchange affairs since 1893 is found in the publications of the Commission of Inquiry. Besides the report itself (*Bericht der Börsen-Enquete-Kommission*, Berlin, 1893) the most important of these publications are : the *Sitzungs-Protokolle*, the *Stenographische Berichte* and the *Statistische Anlagen*. There are also some special reports of varying value.

Of the parliamentary documents, mention may be made of the original bill (*Entwurf eines Börsengesetzes*, No. 14 *der Drucksachen*, 9 *Legislatur-Periode*, IV *Session*, 1895–96) and the debates of the same session. Of the act itself there are various handy editions: by Vermuth and Brendel, Berlin, 1897; by Apt, Berlin, 1897; by Hoffmann, Berlin, 1897; by Kahn, Munich, 1897. These give most of the special orders of the *Bundesrat* and of the Prussian minister and the new rules of the Berlin Exchange. Hoffmann gives the rules of the Hamburg and Frankfurt Exchanges as well. There is no collection of the special orders for all the different exchanges.

It would be impossible in this place to give anything like a complete list of the numberless books, pamphlets and articles on Bourse reform that have appeared in recent years. Dr. Endemann in the *Juristisches Litteraturblatt* of December 1, 1895, has given an elaborate review of the recent literature to that date. Special reference, however, should be made to two important discussions of the publications of the Commission of Inquiry: first, the masterly articles of Prof. Max Weber, *Die Ergebnisse der Börsen-Enquete-Kommission*, in Goldschmidt's *Zeitschrift für das gesammte Handelsrecht*, vols. 43, 44 and 45; and, second, the three volumes of Pfleger and Geschwindt, *Börsenreform in Deutschland*, which form Nos. 15, 16 and 22 of the *Münchener Volkswirthschäftliche Studien*. These latter are less valuable than the articles of Professor Weber, but cover some ground not touched by him, and are the most easily available source of information on German conditions. Among the shorter publications on particular topics, particularly valuable are *Das moderne Börsen-Kommissionsgeschäft im Effektenverkehr*, by Dr. Endemann, Berlin, 1895, and "*Börsen und Banken*" by Goldschmidt in the *Preussische Jahrbücher*, vol. 68.

A very interesting treatment of the whole subject of exchange reform from the standpoint of a foreigner is the recent work of Sayous, *Les Bourses allemandes de valeurs et de commerce*, Paris, 1898.

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LEVASSEUR'S AMERICAN WORKINGMAN.[1]

THESE two volumes, comprising more than one thousand pages, are a monument to the painstaking industry, the ripe scholarship and the scientific spirit of their distinguished author. Émile Levasseur, member of the Institute of France, professor of political economy at the College of France and at the *Conservatoire des Arts et Métiers*, vice-president of the International Institute of Statistics and author of a number of works on political economy and on the economic history of France, was commissioned in 1893, by *L'Académie des Sciences Morales et Politiques*, to make this investigation into the present condition of the working classes of the United States. He bore a similar commission from *L'Institut de la Société Nationale d'Agriculture* to study our agricultural development; and his volume on this subject, *L'Agriculture aux États-Unis*, published in 1894, has already been reviewed in this journal. The result that crowns his labors is the most complete picture that has yet been written of the contemporaneous social and industrial life and forces of this country, and of the economic conditions controlling their future development. Indeed, there exists no more comprehensive exposition of the present industrial status of any country in any language. He has done for us what none of our own students or statisticians has attempted, on any scale at all comparable in comprehensiveness.

M. Levasseur was especially equipped for this work, apart from his standing as an economist, by a sojourn among us in the year of the Centennial Exposition in Philadelphia. Returning after seventeen years, he confirmed or readjusted his first impressions; studied the evidences of our intermediate progress, as they appeared at the Chicago Exposition; and passed five months in visiting farms, factories, villages, cities and institutions, in intercourse with our people in every walk of life and in every department of industry, and in gathering the opinions of economists, statisticians, manufacturers, labor leaders and politicians. Those of us who encountered him during his wanderings were impressed by the thoroughness of his methods and the earnestness with which he pursued them — in marked contrast with the superficial investigations of most of the foreigners who come here to write books about us.

[1] L'Ouvrier américain. Par Émile Levasseur. Paris, L. Larose, 1898. — 516 and 634 pp.

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The results are proof that he sought the truth and that he found it. His controlling motive seems to have been a desire to set down the facts precisely as they exist, with avoidance of individual coloring and personal prejudice, and with a scrupulous fidelity to detail which is at times wearisome and unnecessary. Wherever a topic is approached upon which two opinions prevail each view is set forth with equal fidelity. What he saw is everywhere supplemented by what he has read. His volumes reveal an astonishing familiarity with our interminable literature on the labor question, as it appears in national, state and municipal reports, and in treatises, documents, pamphlets and newspapers. The criticism which American readers will make upon M. Levasseur's use of authorities is that it is indiscriminate, with little attempt to sift and pick, and with scant regard for the relative standing here at home of men whom he is frequently at pains to refute. Everybody who has ever written and dogmatized on the labor question appears here on the same level with everybody else, with results that are at times incongruous. This lack of a nice weighing of the relative value of authorities is the natural consequence of the omnivorous reading of a stranger. It has unnecessarily loaded down the work, without, however, warping or distorting the author's judgment.

M. Levasseur's volumes remind us, by their candor, their freedom from old world prejudices and their judicial spirit, of James Bryce's portrayal of the workings of our civic institutions, of von Holst's study of our constitutional history, and at some points of de Tocqueville's earlier investigations into *Democracy in America*. There is, in fact, a certain kinship between the two French studies of the young and vigorous republic: the one work may, in a sense, be called a sequel to the other — unlike as it is in method and scope — a recasting of the plummet into the waters of democracy after the lapse of sixty years. The keynote of de Tocqueville's volume was the influence of American equality of conditions upon the evolution of social forces, not merely in the United States, but, by constant action and reaction, upon civilization everywhere. M. Levasseur's volumes are, in their essence, a study of the effects of this influence on our material and social progress; and he has reached conclusions which may fairly be said to set at rest the more serious apprehensions which disturbed his distinguished predecessor.

"The future of the American people," wrote Mr. Pidgin, the English author of *Old World Problems and New World Answers*, "is the greatest question of the modern world." So M. Levasseur regards it. We are working out here, he thinks, on a broader scale,

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under freer conditions, with a more unrestrained play of economic forces, the same problems which perplex all the great living nations. In depicting our industrial development, M. Levasseur is really writing the world's industrial history, with the United States as a basis, and with constant reference to the points of variation, which appear as he progresses, in the experience of other countries. That we ourselves have this large view of the influence of our destiny upon the rest of the world was constantly brought home to him while he sojourned among us. At times he cannot refrain from gently chiding us for our extravagant language in speaking of our own achievements and possibilities:

Among the superlatives with which the Americans describe their establishments, the most usual are "the greatest," "the largest in the world." . . . Success intoxicates; this young nation has grown so fast in a century that she is excusable for believing that nothing equals her grandeur.

American exaggeration amuses him; but it neither pains nor disgusts him, for he finds warrant for it everywhere.

While these volumes are a study of actual conditions in America, they contain also a full development of the author's theory of political science. Cause and effect are inseparably connected, in his mind, with every economic fact of which he treats. He is one of the most distinguished disciples of the modern historical school of political economy, and announces himself as a pupil of Roscher.

It is upon his footprints [says Levasseur] that I have entered by the gateway of history into the domain of the science of political economy. . . . This method has, on the one hand, by enlarging the horizon of the student, confirmed certain of the laws of political economy laid down by the theoretical economists; and, on the other hand, it has disturbed our faith in the universality of others.

He declares that political economy is concerned more closely with moral and social than with physical forces; because, while its theme is wealth, and wealth is material, it treats first of all of the relations between men in the interchange of services and commodities. The close observation of the facts of past and contemporaneous history preserves this school of economists from the danger of losing the sense of reality: it permits the economist

to penetrate into the recesses of the life of nations, and to judge not only the diversity of the phenomena of a particular period, but their variation in the lapse of time; to extend his investigations and the compass (*la portée*) of his doctrines in proportion as the material interests of society extend and modify each other; to show the intimate relation which at all times unites *les choses de l'ordre économique à l'ensemble social.*

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Part first of the work opens with a bird's-eye view of the development of the United States, as revealed by the statistics of the federal census. The care with which he has measured the limitations of these statistics is in marked contrast with that lack of care shown by Michael G. Mulhall in a recent magazine article, wherein he accepts the gross total value of our manufactured products of 1890 ($9,372,437,283) as their real value, and draws therefrom certain deductions, in comparing our industrial development with that of other nations, which are absurd. Levasseur points out that this aggregation of figures is made up of duplications and reduplications of the products of those industries which furnish the raw materials of others, and he readily reduces the total nearly one-half. Some of his criticisms upon our methods of industrial census-taking are just, particularly those relating to the method followed in ascertaining the amount of capital employed; but the fact remains that our census statistics of manufactures are more complete and more satisfactory than those attempted by any other country.

Making every allowance for possible defects in our standards of statistical measurement, Levasseur agrees that our census returns embody the indisputable proofs of "*un merveilleux progrès*"; nor can any American complain of the generosity of his judgment upon the development and the resources of the United States. He says:

> It is not necessary to exaggerate the favor with which nature has blessed the United States to explain how and why she has accumulated gifts beyond any other land. The genius of enterprise, which manifests itself in the multiplicity of inventions, and in the daring with which the captains of industry undertake new ventures and capital supports them, is undeniable.

The development of industry in the United States is, he thinks, "in its importance and rapidity, a unique phenomenon in the economic history of the world."

Levasseur cites the accelerating tendency towards concentration in all branches of machine industry as the characteristic which most distinguishes American industry from that of other manufacturing countries. This movement is, indeed, visible in every land; but certain causes tend to expedite it here more than elsewhere. What most impressed him was the rapid transformation of the small factories into large ones, of the large factories into aggregations of factories under a single administration; and the enormous increase in products from a steadily diminishing number of separate establishments. Prominent among the causes which facilitate this process of concentration, he names "*échantillonnage*" — the interchange-

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ability of the parts of machines, permitting instant replacement of worn parts, and the great uniformity of product. This operates both as cause and as effect in the steady movement towards concentration.

A second characteristic which operates in the same direction is the marvellous success of our manufacturers in the application of devices for economizing hand labor. In this particular he finds us far in advance of any European nation. He illustrates the rapidity of the development of our industrial mechanism by this anecdote:

> In 1876, when I was in America, they showed me at the Merrimack Mills, as a curiosity, a female weaver who ran seven looms weaving calico, four in front and three behind her; the other weavers ran four or less. They would hardly believe me when I told this fact in France. In 1893, in the same mill, I saw an entire row of workwomen managing eight looms, four in front, four behind; the majority of the weavers ran six or four.

To increase production and decrease labor costs, American manufacturers do not hesitate to make old iron out of new machines whenever they can find others which will do the work quicker and cheaper. Herein lies, in his opinion, the chief secret of the so-called "economy of high wages": high wages are not in themselves the cause of cheap production; but cheapness of production is an effect, indirectly brought about by the necessity of off-setting high wages by resort to more perfect automatic processes. Levasseur illustrates this process in this way: If the manufacturer has an opportunity to introduce a machine costing 50,000*f.* which will displace four workmen, but which he must replace by another in ten years, in a country where the wage is 2000*f.*, he will not hesitate to purchase the new machine, because it will effect a net economy of 3000*f.*; whereas the manufacturer in a country where the average wage is 1000*f.* will not take the machine, because it will involve a loss of 1000*f.* Thus high wages in the United States are operating steadily to force the substitution of automatic machinery for hand labor. Numerous illustrations are given of nearly automatic production for which he knows no parallel in Europe. He quotes the report of the workingmen's delegates to the Chicago Exposition, that if France, without the protection of a tariff, were called upon to compete with the United States, it would be necessary, as a first step, "to discard all existing machinery."[1]

[1] There are two sides to the advantage which comes to the manufacturer by reason of the constant improvements in machinery. Hon. William C. Lovering, of Massachusetts, a member of Congress and a successful cotton manufacturer,

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Another cause facilitating and accelerating industrial concentration, M. Levasseur finds, is the remarkable mobility of our industrial population and its freedom from professional traditions. Throughout Europe the population is habituated, from father to son, to the same labor in the same place. In the United States, on the other hand, a new factory, offering good wages, attracts large numbers of workmen, often from a great distance. This exceeding mobility is largely responsible for the fact that American workmen, as a rule, work harder than those of Europe. Working harder, working with better machines and in larger establishments, where all the economies of production can be studied, it follows that "to produce in large quantity, quickly and cheaply, American industry is better equipped to-day, in many lines, than that of any other land in the world." Cheapness of production and sale is the end towards which our manufacturing enterprise chiefly and successfully aims.

Those European manufacturers who scout the idea of any large extension of the foreign trade of the United States, accordingly, in the opinion of M. Levasseur, deceive themselves: "They live under a delusion which time will dissipate." Hence he discards the claim that American industry is any longer in need of protective tariffs. Into his argument against the protective policy we shall not attempt to enter; but it is pertinent to remark that the whole of this first part of the work is a practical demonstration of the fact that the prices of manufactured articles are not permanently enhanced by the operation of protective duties. The forces at work in this country tend steadily towards cheapening the cost of production; and this is the great distinguishing characteristic of American industry to-day.

Whatever tends to this one economic end, without the sacrifice of other essentials, is, in M. Levasseur's philosophy, a distinct gain to civilization. The end of industry is to satisfy the needs of mankind; and whatever helps to do this, as cheapness of production preëminently does, is, in the large view, for the benefit of mankind, in spite of the individual loss and suffering that may temporarily and incidentally

recently called attention to the fact that "a cotton mill wears out faster than any other mill on account of the tremendous speed at which its spindles and looms are run. The moment it begins to lose money it loses very rapidly. Another terror that hangs over the manufacturer to-day is continual invention. He may build the best mill possible and equip it with all the latest and most improved machinery, and the chances are that in a year or two, long before his machinery has begun to wear out, it will become obsolete, so quickly does one invention follow on the heels of another. Therefore it is that new devices and inventions to save labor bear both upon capital and labor."

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follow the changes and combinations constantly necessitated to bring it about. The law which steadily crowds industry towards the machine and the big factory is irresistible,

because it leads to the cheapness which consumption seeks before all else, and which is one of the ends of economic civilization. It is a Utopia to believe that the world will return, by some modification of the social order or the motive forces, to the *régime* of the little family shop.

It is, then, perfected machinery, with its accompanying tendencies to concentration, which entrepreneurs, wage earners, economists and reformers must take as the basis of their plans, calculations and forecasts of the future. These tendencies exist, and will intensify; they can be neither prevented nor retarded, nor should they be regretted. They have their *raison d'être;* and it is foolish to attempt to block their development by the artificial restraints of legislation: "*C'est là qu'est l'avenir!*" Nevertheless, the aggrandizement of manufacture has its natural bounds, and there will always remain a large place in the world's economy for the small industries and the small traders.

These conclusions bring Levasseur to the investigation of the "trust" and other forms of business combination which mark the recent development of industrialism. In and of itself, the trust is a legitimate result of the liberty of association; but it is also one of the instances where association, whether of employer or employed, can become subversive of liberty; and always in such a case the intervention of the government for its regulation or suppression is legitimate. The exact limit to which freedom of action in such trade combinations should be permitted is difficult to set. As at present organized and chiefly carried on, trusts are the transitory incidents of an evolution which is sweeping rapidly onwards, transforming the face of society, but always to the advantage of society. Whatever contributes to cheapness of production increases consumption and adds to the sum of human happiness.

Concentration and the indefinite extension of perfected machinery have no terrors for Levasseur from the point of view of a possible overproduction. He quotes the prediction of Sismondi, writing in 1827, that the increase of manufactured products would go on "to a point which passes infinitely [*sic*] the purchasing power of the public," and that "most of the workmen of England will find themselves upon the street, if the establishments employing them are permitted to substitute steam-moved machinery." If the plethora of 1827 has not prevented our generation from consuming a produc-

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tion much more abundant in 1895, is it necessary, asks Levasseur, to despair of consuming very much more in the next generation? "The trouble," he concludes, "with the people who argue for chronic overproduction is that they are ignorant of history. If they knew better the experience of the past, they would be less distrustful of the future." The equilibrium between production and consumption, while always unstable, always establishes itself. It may be temporarily disturbed, but it readjusts itself by its own economic volition; and inasmuch as the actual needs of humanity are far from being fully satisfied and can be indefinitely extended, it follows, speaking generally, that "*there is never too much wealth in the world.*"

Such are M. Levasseur's ideas on the economic aspects of industrialism, as exemplified in the experience of the United States. They are marked by the cheerful optimism of a student who has followed the industrial evolution, as it has progressed from century to century and from decade to decade, and who finds that every new phase of development, however startling at first and however productive of temporary disturbance, has worked in the end for the advancement of society as a whole.

In his treatment of the sociological side of the subject, M. Levasseur studies the actual situation of the American workman from every point of view — in his relations to his employer, to his fellow-workman and to the state.

The whole body of our legislative enactments for the regulation of the conditions of labor is closely examined, in comparison with the similar legislation of Europe; and the conclusion is reached that the strategic position of the American workman — his legal rights, privileges and protections — is superior to that of the workman in any other country, England possibly excepted. The influence of democratic institutions in the promotion of the species of class legislation which is called labor legislation is traced, and the recent tendency of these laws is condemned. Factory legislation introduces limitations upon freedom of contract that are repugnant to Levasseur's theories of industrial liberty. The advantage and the necessity of laws which determine hygienic conditions in factories and apply the general police regulation of the state to manufacturing industries he admits, but as to the rest he says:

> To any one who knows that liberty and property are essential principles, it is certain, that persons of age, male or female, employers or employees, are and ought to be free to make with one another the contracts of sale or of wage which they desire, provided only that these contracts are not repugnant to morality.

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The American workingman, who is responsible for the labor laws, is in danger of forgetting that his wage is proportioned to the productivity of industry and the abundance of wealth. Whatever tends to restrict output, whether it be public law or private regulation of organized labor, reacts in the long run upon the laborer himself.

Then follows a study of the development of trade-unionism in the United States. Organization has, he believes, beyond question strengthened the position of the American workman, and is an instrumentality which the employer must accept in his future dealings with his employees. As to just what direction trade-unionism in the United States is likely to take in the future, M. Levasseur is clearly in doubt. Our legislation on the subject is still in the fluid state; and whether legislatures are to control trade-unionism, or trade-unionism is to control legislation, is still an open question. The good that trade-unions can accomplish will not be diminished, while their evil results will be restrained, if by law they are made responsible for their acts. An examination of the history and statistics of strikes in the United States convinces him that they are as commonly resorted to here, as an instrumentality for the remedy of grievances and the readjustment of wages, as in any European country; and in some instances, like the Homestead riots and the Chicago railroad strike of 1894, they have assumed lawless and dangerous phases almost unknown abroad. Nor can he detect any remedy for the future recurrence of strikes, here or elsewhere. Arbitration is an agency most valuable at times; but its limitations are obvious, and it fails in the emergencies where it is most needed.

He examines the various experiments in profit-sharing in this country and elsewhere, and concludes that none of them can succeed except where both employers and workmen are of choice material, above the average of humanity — a condition which renders profit-sharing at best an uncertain solution of the labor problem, "which is not soluble." A practical objection to the general introduction of profit-sharing is the reluctance of the average American workman to bind himself too closely to his employer. Productive coöperation is, for economic reasons, even less promising.

As the case stands to-day, the investigations of M. Levasseur satisfy him that the prevailing wages in the United States are higher than in any European country, and very much higher than in France, Germany and other Continental nations. Admitting the impossibility of establishing any true mean of wages, either here or elsewhere, by reason of the great diversity in the rates which prevail in different

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industries and in different branches of the same industry, he hazards the statement that for men the mean daily average in 1893 lay between $1.75 and $2.00. This is higher than the average established by an arbitrary calculation based upon the figures of the eleventh census, which returns the average annual earning at $444. As compared with the rates of wages which prevailed in the first half of the nineteenth century, to-day's wages may fairly be said to show an average increase of 100 per cent. Not merely the nominal, but the actual, wage of the American workman is greater than that of the workman of other countries; because, while the nominal wage tends to increase, the prices of most of the necessities of life tend still more to decrease. Without doubt, the ordinary necessities of the workman, rent alone excepted, quality and quantity alike, "cost rather less than more in the cities of the United States than in those of France, so that his wage is not only nominally, but actually, more than double that of the French workman." Notwithstanding the higher rent he pays, the American workman is in general far better housed than the French or even the English operative; and the number of workingmen who own their own homes is relatively much larger in this country than in any other.

It follows that the American workman has attained a higher standard of living — "*niveau d'existence*" — than is at present possible to the European workman. The typical American workman is a type superior to any other. His superiority is due to his high wage, which has habituated him to a more refined existence; to the public school, which has cast him in the same mould with the French bourgeois; and to the democratic character of the institutions and habits of the nation. Whatever may be the future admixture of different and inferior races through immigration, M. Levasseur expects to see this type maintain itself; and therein, he believes, lies the safety of the nation. This typical American workman has not only steadily improved his standard of living, but is always striving to improve it still farther. This is one explanation of prevalent discontent, which, from this point of view, is not a manifestation to be deprecated.

As to the future rate of wages, he sees no reason to anticipate a decline; for our agricultural and manufacturing industries continue to absorb with ease the influx of immigrants. The tendency is rather toward an advance, but not strongly so; for it is evident that M. Levasseur believes that the share which labor now gets, from its association with capital, has reached in the United States a point beyond which it cannot greatly advance, without depriving capital

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of sufficient inducement to continue to furnish employment. He has analyzed the stock arguments of the leaders of trade-unionism, to the effect that under the present industrial *régime* there is an unjust distribution of the products of the joint efforts of labor and capital. To ascertain the fact in this regard is, indeed, one of the main inquiries of the book. He quotes Carroll D. Wright's statement that the wage ought to be in proportion to the profit and vary with it — that "after capital and labor shall have received fixed and reasonable compensation, each for its investment, the net profit of production shall be divided under profit-sharing plans and methods, or through industrial copartnerships." This is "a seducing prospect," he says,

because it seems to realize an idea of justice, but it is not the true theory of wages. The wage earner occupies a different position from the entrepreneur: he has not the same chance of gain, not having the same risks. The wage is relatively fixed, compared to the profit, which is contingent; it precedes or accompanies production, whereas the profit follows the sale, and above all the payment, both of which are future contingents at the moment of production. Among a thousand producers who, at the same time and in the same land, make and sell the same article, there will be perhaps from twenty to forty who make a fortune, some hundreds who vegetate, and more than one who will ruin himself, although all will pay the same wages. Since it is not possible to insist that the workmen of those who lose shall labor gratuitously, how is it possible to claim that the employees of those who prosper have a right to a contingent share in the gains? In both cases the workmen have sold their labor at a price; and one and all have received the same results of their labor and their time.

M. Levasseur detects the existence among our working classes of a strong and growing tendency toward the socialistic movement. Nevertheless, he looks upon socialism — or the present predominating phase of socialism, collectivism — as a merely transitory phase of the popular movement. Socialism will exist, he says, as long as do wages;

but it will take up new dogmas, whenever the mass of its adherents come to realize that its scheme for the revolution of society is impracticable; the theories of to-day will go out of fashion, just as did St. Simonism and Fourierism in former years in France.

The supreme guarantee against collectivism and communism, in his opinion, is their impracticability. Nevertheless, it is not wise to view their propaganda with indifference. Notwithstanding the fact that, from every point of view, the American workman is better off than his fellow-workman in any other land; that he is better situated to-day than at any previous time; that the great majority of

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our wealthiest citizens are "*les fils de leurs œuvres*"; that the road to success is open to all; and that there is everywhere visible the influence of education, of inherited regard for law and of a sense of responsibility which comes from democratic surroundings — despite all this, he listens, "not without some complaisance," to teachers who tell him that he is unjustly treated, that he has a right to more than he receives and that the only obstacle to his obtaining more is his employer.

When, in a land where the people can do all, you feed the workman upon hatred of his employer and the rich, and hold out to him revolution by force as the infallible means of bettering his future, one cannot help saying that here is a public danger. If a collectivist society cannot be organized, the organization of actual society can be disturbed.

Against the claims of the agitators M. Levasseur sets five conclusions, which happily embody his social philosophy:

1st. It is not wisdom on the part of the American workman, so fortunately situated, to make himself unhappy through envy of others more fortunate than himself, or to refuse to enjoy the good that he has because his neighbor may have more; this spirit is an impediment to the progress of civilization.

2d. It is not proved that during the nineteenth century the income of the working classes has increased in a lesser degree than that of the majority of the other classes of society.

3d. Modern inventions, scientific and mechanical, have procured for the world certain advantages, which all the inhabitants enjoy equally, whatever their social condition, and irrespective of whether they had any hand in creating these advantages.

4th. The individual contribution of labor to the production of wealth is no greater to-day than formerly, although the production itself is immensely greater.

5th. The profit which the workingman has secured from the progress of industry and the increase of wealth is evident from the great advance which has taken place in his standard of living.

On the whole, he concludes, the outlook for the future is favorable. Every epoch has its special problems. In Europe the communal emancipation in the middle ages and the religious emancipation in the sixteenth century caused long and terrible agitations; "but civilization did not flounder." That which must not be lost sight of is the fact that in the industrial evolution, in the long run, the good gets much the better of the evil; that society has sought and found palliatives to the worst evils; that the increase of wealth has furnished means to apply them more liberally; that it will find and apply others; that

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the actual *régime*, that of individual liberty and private property, is a reality long known and tested by hundreds of millions of men.

In the foregoing I have attempted to present a synopsis of M. Levasseur's findings and opinions upon the economic situation in the United States, and not to make any independent study of them, from the standing point of a critic or commentator. It is important to a thorough knowledge of ourselves that we should occasionally see ourselves as others see us; and M. Levasseur is a clear-headed and fair-minded observer, who sees our faults and our weaknesses, but has no disposition to exaggerate or distort them, and whose judgments are kindly and impartial. If his conclusions lack somewhat in definiteness on some of the problems which he faces — if his habit of looking upon all sides of a question leads us at times to conclude that he himself is to be found on none of these sides, it is necessary to admit that his refusal to commit himself demonstrates the absence of the dogmatic spirit. On most of the great economic questions he is sufficiently explicit; while on others he is reserved, because the progress of events compels the impartial student to preserve an open mind. His conclusions cannot, perhaps, be better summarized than by a translation of his final passage:

The American people is astonished at no singularity, and must have a trial of all. But it is not long misled by sonorous words if it finds them empty; it loves the concrete in politics. The democracy which stirs in its breast is subject to tumultuous and disquieting upheavals; but thus far, after each transient ebullition, it has returned to the level of reason and has continued to prosper. The American people has as much faith in its destiny as it has in progress; and, somewhat intoxicated by its prodigious good fortune, it delights in believing that it to-day holds the sceptre of civilization. This optimistic belief is a barrier against the danger of violent revolution. I have no doubt that, in spite of agitations which may be profound, the twentieth century will see yet another increase in the prosperity of the United States. If the next century does not succeed any better than ours in answering pending questions with the aid of chimerical solutions, it will very probably ameliorate the condition of the working class in more than one respect, as the nineteenth century, and especially the last half of the nineteenth century, has already done. And with the same confidence that the Americans have in their future, I may say, with respect to their industry and its problems, what I have already said in speaking of the present difficulties of their agriculture: *Fata viam invenient.*

S. N. D. North.

Boston, Mass.

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REVIEWS.

Old Virginia and Her Neighbors. By JOHN FISKE. Boston and New York, Houghton, Mifflin & Co., 1897. — 2 vols., 318, 421 pp.

These volumes, in the series of works which Mr. Fiske is publishing on American history, occupy a place between his *Discovery of America* and his *Beginnings of New England.* The present is a less thorough piece of work than the former, but contains a more adequate treatment of the subject than does the latter. Beginning with the movement which led to the colonization of Virginia, the author traces the settlement of the southern colonies and their history until 1690. Two or three chapters in the second volume contain miscellaneous facts concerning this group of colonies in the eighteenth century. Mr. Fiske announces, however, that in a later work he will resume the thread of New England history, interweave with that the story of the French wars — in which finally all the colonies became involved — and thus establish the connection between his volumes on the seventeenth century and his *American Revolution.*

The materials which Mr. Fiske has used in the preparation of *Old Virginia* are well-known "relations," records, state histories and monographs, accessible in print and utilized many times before by writers on the same period. He has not infrequently used secondary sources when the originals were not difficult to procure. But he has brought to his task wide knowledge of general history, and he frequently uses this by way of introduction, digression, and comparison to illuminate his subject. His researches into the customs of the aboriginal Americans enable him to throw light upon the relations between them and the early settlers of Virginia. By availing himself of monographs recently issued he has been able to give a fuller and more satisfactory account of the history of Maryland, both before and after 1660, than has hitherto appeared in any systematic work. By utilizing documents which have been printed in the *Virginia Magazine of History* he has supplemented to some extent Doyle's review of Bacon's Rebellion. He gives also a rapid sketch of Carolina history, which calls for no special comment.

Mr. Fiske is quick to perceive the romantic and to give prominence to that in his subject which appeals to general human interest.

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Courageous and manly effort always finds in him a champion ; privilege, oppression of the common man, the hampering of local and individual effort by restrictions imposed in the interest of a remote power always awaken his criticism, if not his denunciation. The history of Virginia under the London Company, and of that company itself, furnishes more incidents of romantic and general human interest than does any other part of the subject to which Mr. Fiske devotes himself in these volumes. The career of Captain John Smith, the early struggles of the colony and the company to save their enterprise from destruction, the later work of the company and the gallant fight which it made against the oppressive interference of the king, receive sympathetic treatment at the hands of the author. But we must believe that Mr. Fiske's effort to rehabilitate Smith as a writer and editor of "relations," and thus as an authority upon early Virginia history, is not wholly successful. The fundamental difficulty with the historical writings which go under Smith's name, except the *True Relation*, is to be found in the bias which runs through the whole. Apparently they were written in part to promote a Smith cult and to belittle his opponents and rivals. The critic, therefore, must be on his guard, not only in reference to the Pocahontas incident, but in regard to many other statements and stories. No explanation of the Pocahontas incident, for example, however plausible it may seem, can remove the doubt which hangs over its credibility. The view of Mr. W. W. Henry — which Mr. Fiske has adopted — that it is one of the incidents which were omitted from the *True Relation* by its editor rests on a pure assumption. Inasmuch as the event is not recorded in that document, we can never feel sure that it occurred. Fortunately, it is for only a few months of Virginia history that we have to depend exclusively on Smith's writings ; therefore, by questioning to some extent their credibility we do not lose the history of the founding of that colony. Neither are the real excellencies of Smith's character and work seriously obscured by the recognition of the fact that he was a boaster and a strong partisan.

The few supplementary chapters which Mr. Fiske has written on the period subsequent to 1690 add little to our knowledge of the subject. They are fragmentary and inadequate. Moreover, the view which he has taken of the Revolution, and the fact that he treats the colonies largely as isolated communities, without regard to a system of imperial control which was gradually weaving its meshes about them and assigning them their place in a growing imperial system, are serious hindrances in the way of a successful treatment

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of the history of the eighteenth century. Mr. Fiske, it must also be said, is not systematic. Apparently it is social, rather than political, development which chiefly interests him. His classification of the subject is based on divergences of social types, rather than of governmental forms; but in the treatment of his material he often strings together in a confusing manner facts, events and arguments derived from these two distinct realms. Often little effort seems to be made to arrange material in the order either of time or of cause and effect. The continuity of the narrative is frequently interrupted by long digressions. Good examples of such defects may be found in the chapter on the "Kingdom of Virginia" and in that on the "Coming of the Cavaliers." The effect is scrappy, and it does not conduce to the correct understanding of either social or political development, or of the relations between the two.

These volumes are also marred by errors of detail, to some of which attention must now be called. Thus, the author states that by the charter granted to Raleigh it was provided "that the people of those colonies should be governed by such statutes as they might choose to establish for themselves" (vol. i, p. 31). As a matter of fact, no political rights whatever were bestowed by that patent on the colonists, but only on the grantee, his heirs and assigns. This was substantially the case with all the charters, save those issued by Charles II to Connecticut and Rhode Island. Other passages (*e.g.* vol. i, p. 65) show that Mr. Fiske thinks that the words "liberties, franchises and immunities," which occurred in the charters, referred to public rights and thus guaranteed the existence of assemblies. That idea, indeed, underlies much of the reasoning which is expended upon questions of colonial law and policy. Such an idea, it can be confidently affirmed, is an error; it was only private rights which were guaranteed in the charters. The inferences, therefore, which Mr. Fiske has drawn from the assumption fall with it.

It is stated that by the charter granted to the London Company in 1609 the local council was abolished and a governor with autocratic power was set over the settlers (vol. i, p. 146). The charter did not mention the local council, but gave the council in England power to establish in the colony such forms of government as it saw fit. We know from Strachey and other authorites that Lord Delaware instituted a council in the colony. Hence we must believe it to have been held that the council was not abolished. If, as the author says (vol. i, p. 228), the Virginia assembly of 1619 was patterned after the old English county court, it would be interesting to know what com-

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ponent of the county court would be taken to correspond to the governor and council in the assembly. Further, what proof has the author that even the elective part of that body was "patterned after" the English county court? On page 187 of the same volume he says that the general assembly of Virginia was "essentially similar" to the general court of Massachusetts. Whatever the phrase may mean, the two legislatures referred to differed in very important respects. In Virginia the governor and council were appointed by a power outside the colony; in Massachusetts they were elected by the freemen of the colony. In Virginia the acts of the legislature had to be approved by the company in London before they could go fully into force, while in Massachusetts approval by an outside power was not necessary. The position of the governor, also, was not the same in the two bodies. Why, again, should it be affirmed that the county court was the prototype of the general court of Massachusetts, when we know that the latter body was the general court of the Massachusetts Company reproduced in the colony? Instead of the London Company exercising "entire sovereignty" over Virginia, as is stated (vol. i, p. 145), it had only subordinate governmental rights over the colony, for the exercise of which it was responsible to the king. It was "virtually independent" of Parliament, simply because that body had not at that time undertaken the task of legislating for the colonies.

Mr. Fiske gives, on page 280 of the same volume, a rough classification of colonial governments. He believes that Massachusetts and Virginia under the company belonged to the same class, while Georgia was distinct in origin and form from Virginia. On closer examination he will find that this classification will not hold. In order to group New Hampshire with New Haven and the other colonies of southern New England he has to ignore a good deal of history — namely, the share which the New England Council and John Mason had in the founding of New Hampshire, and the fact that the rights which originated with them finally prevailed over the usurpation of Massachusetts. New Hampshire was never a corporate colony. Delaware was also legally a royal province during most, if not all, of its existence.

It is stated (p. 284) that the primary assembly was abandoned in Maryland in 1638. The records, however, show that the assemblies of March and September, 1642, were wholly primary bodies or attended by proxies; that the proxy system was retained till 1644; that the assembly of January, 1648, had no representative element in it; and that in the summons of April, 1650, it was left to the option of the free-

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men to choose delegates or attend by proxy. When Mr. Fiske says (in vol. i, p. 285, and vol. ii, p. 145) that Maryland was exempt from imperial taxation, meaning thereby Parliamentary taxation, he fails to recognize the truth that it was not possible for the king by the issue of a charter to exempt any British subjects from taxation by Parliament. When he also says that, in case of a controversy between Lord Baltimore and his subjects, no appeal could be taken to any British court, he forgets that by the common law every subject had a right to appeal to the crown, and that the exercise of this right was not and could not have been prohibited by the Maryland charter. It is firmly believed that the statement of the author (vol. i, p. 288), to the effect that, on the forfeiture of the Virginia charter in 1624, the king promised that the colony should retain undiminished the territory which the company had possessed, is without foundation. What he did promise was that the property rights of the individual colonists should not be infringed. That being true, the grant of Maryland to Lord Baltimore was not an instance, as Mr. Fiske claims, of carelessness or stupidity on the part of the English government. In the same paragraph he cites grants made to Robert Gorges in Massachusetts and to Samuel Gorton in Rhode Island as equally flagrant examples of bestowing the same thing on different persons at the same time. I am aware of only one grant to Robert Gorges, and that was made by the New England Council, and did not overlap any prior grant. I should also like to be informed what tract of land the English government or any other authority ever granted to Samuel Gorton, in such way as to bring it under the description which the writer has applied to it. Mr. Fiske states (vol. ii, p. 115) that Lieutenant-Governor Nicholson was deposed in New York by Jacob Leisler and went to England. Nicholson was not deposed, but withdrew from the province of his own choice, within a week or less after Leisler had taken possession of the Fort.

HERBERT L. OSGOOD.

The Liberty and Free Soil Parties in the Northwest. Harvard Historical Series, No. VI. By THEODORE CLARKE SMITH, PH.D. New York, Longmans, Green & Co., 1897. — xi, 351 pp.

This work "separates out the political from the moral movement"; and, describing "that political activity which was most characteristic of the Western movement," traces "the growth of anti-slavery political parties in the several northwestern states, from their begin-

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nings to the time when the public sentiment which they had assisted so powerfully to create resulted in the formation of the Republican Party, in the year 1854."

The trials of the Liberty Party men are graphically set forth — their steadfastness in voting for men whom they knew they could not elect, the wrangling among the leaders and their lack of apparent success owing to their political isolation. National issues, like the annexation of Texas and the Wilmot Proviso, are shown to have given direction to the struggle in the Northwest; and an interesting account of state and county conventions, of campaigning and of journalistic effort, reaches a climax in the Buffalo Convention of 1848. Following that, we have the account of the Free Soil campaign in the Northwest, of the election of S. P. Chase as senator from Ohio and of the collapse of the party, 1849–50. A reason for this last fact is seen in the character of the leaders of the party:

> The men in the forefront of the new party had been ardent partisans and practical politicians, who aimed at electing their candidates. . . . [They had been] active Whigs and Democrats up to the time of the revolt, and most of them had been or were office holders.

Another reason for the Free Soil collapse at this time lay in the fact that slavery in the territories was the all-absorbing topic of discussion of the period. It had seemed necessary for anti-slavery men to make coalitions that would insure the election of anti-slavery men; and in this way

> coalition for immediate results had played its part, and in the various states had achieved some success. . . . Coalition was a two-edged tool; every time it was used it hurt the user almost as much as the object attacked. So effective in both respects had it proved to the Free Soilers that, by 1850, when it practically ceased for a time, it ceased because the Free Soil Party was virtually dead, and its former members had lost the power of compelling concessions.

Further anti-slavery agitation led to the formation of the Free Democracy, which pursued "the true policy for a third party, namely, the middle course between absolute separation and unreserved coalition." Dr. Smith concludes that

> the results accomplished by the Liberty and Free Democratic Parties were mainly educational. . . . They familiarized the minds of all Northern people with political anti-slavery arguments, furnished them with the proper constitutional and political vocabulary, and thus bequeathed to the Republicans, in 1854, a strong practical program. . . . The highest service of

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Liberty, Free Soil and Free Democratic organization was to accustom men to a steady adherence to a great principle, in the face of opposition, contempt and abuse, — to do right for right's sake.

Considering the field chosen by Dr. Smith and the character of his work, it must be said that this production has decided merit. The author has collected a large quantity of valuable data, chiefly from the newspapers of the time, and has judiciously arranged his material in a work of good literary style and sustained interest. The limitations which he has placed upon himself are, however, very serious; for, in thus considering the history of a political party, the restriction of the field of investigation to a particular section, and the exclusion of the "moral movement," limit the scope of the inquiry to a degree that is at times very unsatisfactory.

There are, nevertheless, some places in the work where the author is compelled to break over his limitations, to go outside the Northwest and to discuss questions of a national character. Just how broadly such topics should be treated in a work like the one under consideration is, of course, an open question; yet it seems as if the Buffalo and the Pittsburg Conventions, for instance, should have received fuller treatment. There is another point to which attention may justly be drawn. On page 2 the author says: "Organization was incomplete, personalities counted for more than principles," *etc.* Yet the portrayal of these personalities is not always as full and as accurate as one might wish. One might reasonably expect more than three lines of eulogy upon Sam Lewis (pp. 289, 290), and more than six upon Birney (p. 94). Morris is not treated in so concise a manner; but Chase is left with no very clear characterization.

In response to Dr. Smith's request for additions to the bibliography, the following may be noted: In the Newberry Library, Chicago, there are files of the *Daily Chicago American*, 1839–42; *New York Observer*, 1832–77; *St. Louis Daily Reveille*, 1844–50; *Baltimore Sun*, 1846–67. In the Buffalo Public Library there are complete files of all the Buffalo papers of that time — *Commercial Advertiser*, *Daily Courier*, *Daily Republic* and the *Express*. In the first of these there seems to be a very full report of the Free Soil Convention, nearly the whole paper being taken up for several days with the reports. In the Buffalo Library, also, there is a pamphlet, "National Free Soil Convention of 1848," by John Hubbell, an old Buffalonian. This was read by him several years ago before the Buffalo Historical Society.

JOHN P. CUSHING.

KNOX COLLEGE, GALESBURG, ILL.

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France under Louis XV. By JAMES BRECK PERKINS. Boston and New York, Houghton, Mifflin & Co., 1897. — xii, 496; xii, 488 pp.

Two volumes on *France under Richelieu and Mazarin* and a third on *France under the Regency* have already made Mr. Perkins known to most readers of general history. Two additional volumes now resume the story, and carry the work on from the ministry of Bourbon to the death of Louis XV. Like the earlier volumes, these on *France under Louis XV* form, not merely a history of France, but also an outline of suggestions on the political history of the chief European states. The intricacies of the foreign complications of France are untangled; the importance of those relations is given due weight; and their development and results are set forth in helpful and intelligible order. Thus, although the author begins by treating successively the condition of France and the ministries of Bourbon and Fleury, he immediately introduces a chapter on the war of the Polish succession; and this is followed by some 200 pages on the war of the Austrian succession and by two chapters on India, the return to more particularly local affairs being effected in the concluding chapter of the volume, on the "reign" of Madame de Pompadour. Likewise, the second volume presents considerable material on the diplomatic revolution of 1756 and the war with Frederick, while a chapter each is devoted to the annexation of Corsica and the first partition of Poland. Parallel with these events are discussed internal affairs, especially the Jesuits and the *Parlements;* while one chapter treats of the administration of Choiseul, and another — possibly little more than a weak interpolation — is devoted to his disgrace. An entertaining conclusion is reached in two chapters on "Intellectual and Social Changes" and "The Influence of Literature."

It is proper, if not inevitable, that in such a work the discussion of Austrian, Polish or Prussian politics should be carried on mainly with reference to their connection with the political affairs of France. Thus the reader is enabled easily to keep in view the relation of events and their proportionate significance. So much being fortunately assured him, his acquaintance with these volumes cannot fail to be of advantage. The amount of his knowledge may not be greatly increased; but he will find that such a rewriting of history, with additions of new material, can be instructive, and that such an attempt at interpretation may be valuable in its criticism and suggestion. Writing like this will serve as a stimulus to the general reader, while from the student it should receive its share of appreciation.

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In general, these volumes are similar in character to the earlier works of the same author. There appear no especially striking merits and — considering the plan and purpose of the work — no prominent defects. The material bearing upon the subject seems to have been examined with care and to have been subjected to a judicious selection. The abundant facts have been given a helpful arrangement and, furthermore, have been cast into an attractive form. With all this, the uniform steadiness in the handling of the subject and the conservative tone imparted to the work afford, in these days, something of relief. Whether judged as a literary recast or as a piece of research these volumes may well be shown favor. Detail of judgment may be criticised and construction of facts may be questioned, but the main line of discourse is such as to furnish reading which is straightforward, suggestive and instructive.

The most palpable fault of the volumes is the incompleteness and even uselessness of many citations. To be sure, Mr. Perkins, in his mention of Voltaire, says that his "execution was often imperfect, as are all historical works. . . ." Detailed criticism would thus seem ungenerous, although instances of a rare type of error may be given. Thus, it is stated (II, 173) that in 1763 "Spain ceded to England all her possessions in North America east of the Mississippi." All will not agree that the affair at Minorca was for France "the first victory in the war with England. . . ." Nor do Americans to-day speak of Captain Mahan as one "among English writers." But an extension of such quotations would not impair the value of the work or modify seriously the generally favorable impression which it makes.

H. A. CUSHING.

COLUMBIA UNIVERSITY.

Vincent de Gournay. Par G. SCHELLE. Paris, Guillaumin, 1897. — 300 pp.

This is a disappointing book. From the author of the biography of Du Pont de Nemours and the restorer of the text of Turgot great things were expected. And, indeed, in the 252 exceedingly small pages that are here given to Gournay himself there is a certain amount of new material for which we must be grateful. There seems to be little of Gournay's own writing now in existence, and few fresh particulars to be gleaned about his life; but what could be got together M. Schelle has now set before us, including a number of important letters and a *mémoire* addressed to the municipal authorities of Lyons concerning the *corporations des gens de métier*. Let us

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add that we are now enabled for the first time to realize the nature of Gournay's official activity as one of the *intendants du commerce*. These are not inconsiderable contributions to the history of economics. What we have to regret is that M. Schelle has not made a better use of his own material. He moves throughout in the uncritical atmosphere of Parisian economic orthodoxy; Gournay is with him "*un des fondateurs de l'économie politique*"; and, though in one or two places he suggests a doubt, the general conclusion of his book is a mere repetition of the traditional view of Gournay due to the statements of Turgot and Du Pont. M. Schelle knows of the existence of Professor Oncken's pamphlet on *The Maxim: Laissez faire et laissez passer*, since he refers to it; but he cannot have studied it carefully. It is difficult to understand how any one who had once read Professor Oncken's characterization of Gournay as "a liberal Mercantilist," could have been guilty of repeating the wearisome old commonplaces about Mercantilism and political economy which make up so much of this volume.

One or two examples of M. Schelle's method will be sufficient. Gournay, as is well known, was the author of a translation of Child's *Discourse of Trade* and of the *Treatise on Usury* by Culpepper, which Child reprinted. Child's chief practical object was to bring about by legislation a reduction of the rate of interest. Gournay did not indicate by a single word his dissent from Child's belief that this was possible; in his preface he even remarked that England had made several attempts to reduce the rate of interest, "following the principles of this author," and had succeeded. The presumption, of course, is that Gournay agreed with Child; and this is strengthened by the circumstance that even Quesnay was in favor of the intervention of the public authority to reduce the rate of interest (p. 223). But M. Schelle cannot sacrifice Gournay's orthodoxy so easily. And so, to show that "il avait sur la question de la liberté du commerce de l'argent une opinion entièrement conformée à ses vues générales sur l'incapacité de l'intervention de l'État dans les questions commerciales" (p. 180), he prints — what? A letter to the French ambassador at Rome, suggesting the possibility that the canonist prohibition of usury might be relaxed! This "prouve que son auteur, loin de songer à faire intervenir l'autorité dans le commerce de l'argent, voulait au contraire l'affranchir de *toute* entrave" (p. 184). If M. Schelle looks for that kind of consistency in any of the pre-Physiocratic economists of France, he cannot have pushed his studies very far.

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Take another example of M. Schelle's argumentation. He tells us honestly :

> Dans les écrits de Gournay, nous n'avons trouvé pourtant aucune indication au sujet de la liberté du commerce extérieur. On pourrait même inférer de quelques passages du ces écrits que l'intendant n'avait pas su se débarrasser complètement du système mercantile, et qu'il n'était pas opposé à ce que la métropole se réservât la commerce de ses colonies (p. 221).

Very well; then why not "infer" it? Apparently only to save Gournay's reputation for consistency, M. Schelle thus continues :

> Mais ces légères contradictions *peuvent* avoir échappé à sa plume ou avoir été motivées par des considérations du moment. En réalité on n'aperçoit pas la motif pour lequel celui qui demandait [freedom in various other directions] aurait voulu restreindre l'application des vérités qu'il soutenait.

Turgot once remarked to Du Pont that "everybody likes to be himself, even if he is wrong." And really, on behalf of Gournay, we must remonstrate that, if there is reason to believe he did not hold the doctrine that the foreign trade of a country should be entirely free, he must not have it ascribed to him just because M. Schelle cannot otherwise quite understand his position.

But, then, Gournay had "a system." True, Malesherbes did not think so, and declared that the intendant did nothing but demand the application of ideas that were already commonly accepted in general conversation. This, says M. Schelle, was an illusion : the philosophic Turgot has "*éloquemment montré l'enchaînement*" (p. 198). Unfortunately, the *éloge* attributed to Turgot also assigns to Gournay such ripe physiocratic ideas as the *impôt unique*, which there is not a tittle of other evidence to suggest he accepted. Professor Oncken has already called our attention to the fact that the complete *éloge* did not appear till 1808; and M. Schelle's own discoveries as to Du Pont's editorial methods might suggest some further reasons for hesitation before accepting the *éloge* as evidence of Gournay's opinions.

But the point need not be labored. Indispensable as the book will be to the student of the economic movements of the eighteenth century, it is a saddening example of the limitations of view and the unscholarly, even when industrious, performance of what may be called the Guillaumin circle. In France, says M. Chailley-Bert, in the introduction to the *Nouveau Dictionnaire*, political economy (*i.e.* the political economy of the Dictionary) "exposait ses adeptes à l'impuissance et presque au ridicule." Books like these go far to explain the fact. And it is the greater pity, since the best hope for the future of the Parisian economists lies in the direction of historical study.

HARVARD UNIVERSITY. W. J. ASHLEY.

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Histoire des corporations de métiers depuis leurs origines jusqu'à leur suppression en 1791, suivie d'une étude sur l'évolution de l'idée corporative au XIXe siècle et sur les syndicats professionels. Par ÉTIENNE MARTIN SAINT-LÉON. Paris, Guillaumin, 1897.—671 pp.

Students of the history of the labor movement in France have hitherto been obliged to depend upon the masterly work of Levasseur, *Les Classes ouvrières en France*, published almost forty years ago. Since that time a considerable mass of additional material has come to light, and many new points of view have been suggested. It is time to discuss the subject anew and to bring the earlier history into closer connection with modern times. This has been attempted, and on the whole accomplished with a fair degree of success, by M. Saint-Léon in his history of the French guilds.

His account of the origin of the craft guilds does not contain anything essentially new, being based upon the well-accredited authorities; but his discussion of the French guilds is marked, not only by continual reference to the original sources, but also — and what is more to the point — by a very convenient and methodical arrangement of material. Beginning with the guilds in the thirteenth century, M. Saint-Léon gives a clear account of the nature of the institution, of the rights and duties of masters and journeymen, of the whole mediæval regulation of labor, and of the general characteristics of each trade. In successive books the history is followed from century to century.

The chief points of interest in these books are the statistics of the guilds and of the economic condition of the workmen, and the survey of the guilds in the provinces. All this is clearly put and well arranged. When we come to the temporary abolition of the guilds by Turgot, and to their final suppression in the Revolution, we are dealing with more familiar matter. But here also the exposition is lucid. Special attention should be called to the study of the *cahiers* of the different electoral assemblies at the time of the Revolution, showing very clearly the arguments of the time both for and against the guilds.

Economic historians will not always agree with M. Saint-Léon, however, in his earlier interpretations — as, for instance, in his discussion of the total disappearance of the old Roman corporations in the eleventh and twelfth centuries (p. 51); or in his refusal to go behind the letter of the regulation in the mediæval limitation of apprenticeship (p. 73). His Teutonic friends also will take exception to his discussion of the Alsatian guilds at various periods when Alsace had nothing to do with France.

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When we come to the second part of the book, which deals with the history and the future of the corporate idea, we touch far more debatable ground. The historical part, indeed, is very well done, more especially the history of the various opinions as to the development of the labor unions. This is a distinct addition to our knowledge of the period. But M. Saint-Léon looks into the future as well as the past. The ideal of the author is an association which includes both capitalist and laborer — which is not exactly like the trade union of England, or the mediæval guild.

> The union of the future [, says he,] should be a *conseil de prud-hommes*, a board of conciliation, a society of mutual insurance against accidents, old age and non-employment, a species of savings-bank, a society of information, a group of studies.

M. Saint-Léon's ideal is undoubtedly a noble one. But he fails to tell us exactly how all this is to be brought about, and how the longed-for social harmony is to be attained. In a country like France, however, trades-unionism is still so "suspect" that his work will undoubtedly bear good fruit. Even those who do not share his ideals will welcome the facts and the history of ideas, as well as of institutions, which he has so clearly and so successfully put together.

E. R. A. SELIGMAN.

Studies in the Civil Law and its Relations to the Law of England and America. By WILLIAM WIRT HOWE, sometime a Justice of the Supreme Court of Louisiana and W. L. Storrs Professor of Municipal Law in Yale University for the year 1894. Boston, Little, Brown & Co., 1896. — xv, 340 pp.

The Storrs professorship at Yale seems likely to produce not a few books. Judge Dillon's *Laws and Jurisprudence of England and America*, reviewed in this QUARTERLY six months ago, was a revision of his New Haven lectures; and we now have Judge Howe's course, expanded and rearranged, and furnished with citations of some decisions rendered since 1894. It is Judge Howe's effort to show by comparison the frequent similarity of the ancient Roman, the modern civil and the English common law, and by inference the probable derivation from the civil law of many of the principles and rules of the English law.

The presentation of the Roman law is hardly up to date. Judge Howe refers, for a reconstruction of the XII Tables, to Ortolan, ignoring the work of Schöll (1866), the results of which are con-

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veniently accessible in Bruns's *Fontes;* and his text of the *Corpus Iuris Civilis* is Kriegel's, not Mommsen's and Krüger's. He sends the student to Tompkins's translation of Gaius, instead of to Muirhead's, and to Hulot's French translation of Justinian's Institutes (1806), instead of to Moyle's English version (1889). The German literature he cites only in French or English translations, and he refers more often to the older French civilians than to modern French writers. For these reasons his statements about Roman legal history are particularly unsatisfactory. He bases the power of testation, for example, on the clause of the XII Tables: "*Uti legassit super pecunia,*" *etc.*, instead of the clause: "*Cum nexum faciet mancipiumque,*" *etc.* (p. 227). If this were correct, it would be hard to explain why the Romans resorted to *mancipatio* in order to make a testament. What *super pecunia legare* means Jhering has shown in his posthumous history of Roman law. Another passage of the XII Tables: "*Si nolet, arceram ne sternito,*" is translated in one way on page 245 and in another on page 292, but in neither place rightly. On page 245 the *vindex* of the XII Tables is treated as a mere procedural representative of the defendant: "The defendant," says Judge Howe, "must either go or furnish a *vindex*." The truth is, of course, that the *vindex* appeared only in behalf of such persons as had no standing in court (*cf.* p. 248), and appeared always as plaintiff in an independent suit, the *vindicatio in libertatem.* In interpreting the *dare, facere, praestare* of the prætorian action *in personam*, Judge Howe declares (p. 99) that *praestare* "signified to deliver the possession of a thing without transferring property in it." It would be interesting to know on what data he bases this theory. In the Digest *praestare* is a word of the most general significance; it covers every sort of obligation. Puchta thinks it was originally limited to the obligation to pay penalty for a wrong or damages for non-performance, which is more plausible. The most novel contribution, however, which this book makes to the history of the Roman law is the discovery that even under the absolute empire there was a writ of *habeas corpus.* This was the *interdictum de libero homine exhibendo* (pp. 54, 55). Unfortunately for this theory, the wording of the interdict shows that it ran only against such persons as detained a freeman *dolo malo*, which does not mean "unlawfully," as Judge Howe translates it, but "maliciously." Malice, however, could never be predicated of a governmental officer acting under orders; and this interdict, in fact, ran only against private persons, as a careful examination of Digest 43,

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29 and Codex 8, 8 will indicate. It was ordinarily employed for the benefit of free persons held in *de facto* slavery.

There are other statements in the book concerning the Roman law which are hardly defensible. On page 63 we are told that in the time of Justinian *capitis deminutio media* resulted only from expulsion from the empire. It resulted also from *deportatio in insulam.* On page 69 Florentinus is cited as attributing artificial personality to "a partnership" (Dig. 46, 1, 22). Florentinus certainly mentions *societas* in his list of illustrations; but, considering the sharp distinction drawn everywhere else in the Digest between *corpus* and *societas*, nearly all modern commentators assume that he meant, and perhaps wrote, *societas vectigalium* or *publicanorum.* Such an association had certainly some of the rights of a corporation. On page 83 Judge Howe writes: "Iavolenus said . . . that definition is dangerous, for definition may limit." The context shows that Judge Howe means "limit the development of the law." Iavolenus, however, gives as nearly as possible the opposite reason: "Definition," he says, "is dangerous, for it is almost certain to be overturned" (Dig. 50, 17, 22). On pages 216, 217 it is asserted that the damages allowed at Roman law for an act or omission are such only as "are caused by the act or omission as a *proximate* result." I think this can hardly be maintained in the face of certain passages in the Digest, where the man who kills a slave is held liable to damages in excess of the slave's market value, in one case because the slave had committed great frauds and the master had reasonable hope that by torturing the slave he would be able to discover the accomplices (Dig. 9, 2, 23, § 4), and in another case because the slave had been instituted as heir to an estate (Dig. 9, 2, 23 pr.).

In endeavoring to establish a connection between the Roman and the English law, Judge Howe relies too much on mere similarities, forgetting the inherent probability that under like conditions like results will be independently attained. He proceeds unhistorically, too, ignoring missing links in his assumed chain of causation, and ignoring possible and even probable influences that are not Roman. He demonstrates, much in the spirit of Reeves, the prevalence of Roman law in the province of Britain, and avoids the question of its survival in Anglo-Saxon times (pp. 40, 41). He assumes a probable connection between the fines and recoveries of the English law and the *in iure cessio* of the Roman law, because "such a refined method of conveyancing" could hardly have been derived from the Anglo-Saxons (p. 50). Now, as a matter of fact,

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this "method of conveyancing" by sham suit appeared among the Romans at a period when their jurisprudence was far from refined; a similar method existed among the Continental Germans in the Frankish empire; and it is far more likely that it came to England through Normandy, with other Frankish institutions, than that it was borrowed from the Roman law. It is perfectly conceivable, however, that it might have been developed independently in England. Again, utilizing Brunner's conclusion, as set forth by Pollock and Maitland, that the English jury grew out of the Frankish inquest, Judge Howe assumes that the Frankish inquest was organized by the clergy — which is not improbable — and then promptly connects the English jury with the juries of the Roman criminal courts in the last century before Christ (pp. 52–54). What he overlooks is that these Roman juries disappeared wholly in the second century of the Christian era; that the Frankish *iurati* were employed only to give information, not to try cases; and that the clergy who may have suggested the Frankish inquest and the Norman dukes who employed the inquest as a means of proof and the English judges who transformed the jury of proof into a trial jury — that all of these were probably quite innocent of any knowledge of the *quaestiones* of the Roman republic. In deriving the English writ of *habeas corpus* from the Roman *interdictum de libero homine exhibendo*, and the modern theory of partnership as a juristic person from Florentinus, Judge Howe shows equal courage, but less discretion; for these derivations, as we have already seen, fail at the assumed fountain-head.

All these criticisms, however, touch but a small portion of the book, and not the most important portion. With modern French law and with its daughter law, that of Louisiana, Judge Howe is of course thoroughly acquainted, and the comparisons which he draws between the French civil law and our common law are extremely suggestive and interesting. The reviewer can only suggest that in treating the doctrines of novation and of compensation Judge Howe might have noted the partial acceptance of the first doctrine in Tatlock *vs.* Harris, 3 T. R. 174, and the recognition of the right of a surety to set-off money owed by the plaintiff to the principal debtor in Bechervaise *vs.* Lewis, 7 C. P. 372. In the latter case the English judge cited as argument the Digest of Justinian.

The high standard set by Judge Dillon in the matter of literary finish and attractiveness of presentation has not been lowered in the lectures delivered by Judge Howe.

MUNROE SMITH.

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Unforeseen Tendencies of Democracy. By EDWIN L. GODKIN. Boston and New York, Houghton, Mifflin & Co., 1898.—vii, 205 pp.

Mr. Godkin's exceedingly interesting essays, while nominally written from the cosmopolitan point of view, are in reality dominated by the influence of America, if not of New York alone. The democracy which he has continually in mind is the American democracy, as seen in its development in the American metropolis. For this reason he ascribes to democratic ideas in general the responsibility for all the tendencies of American public life. It may, of course, be true that the democracy of other countries will eventually show the same tendencies which the American democracy has already exhibited. At the same time it is to be remembered that American democracy developed under peculiar conditions—conditions which will probably never be present again.

American democracy developed at a time when population was sparse and means of communication, as compared with those of the present, were very primitive. Such conditions resulted in a decentralization in the administrative system, such, perhaps, as the world had never before seen. Combined with this administrative decentralization was a form of government based on a political philosophy which deified the idea of governmental checks and balances, fixed for all time in an almost unchangeable written constitution.

Such a system of government made effective political action extremely difficult. Under it the legislature was set up against the executive and the courts, while the central government was set up against the local government. If political paralysis—the inability to do anything—were not to ensue, some means had to be found for the harmonizing of these conflicting elements. Such a means was, as a matter of fact, found; but it had to be found outside of the governmental organization and in the political party. The party took upon its shoulders the burden of electing an executive that would enforce the expressed will of the legislature, and of securing the election or appointment of judges who would not permanently oppose the public will. The party had not only to busy itself with all the departments of the central government, but also to take care that the powers possessed by the local bodies, as a result of the decentralized administrative system, were not so exercised as to defeat the will of the people as a whole. The party was thus called upon in America to do more than was ever demanded of a party elsewhere. This is perhaps the reason why loyalty to party, which Mr. Godkin regards as such an extraordinary phenomenon, has been so highly prized in the United States. The people have instinctively felt that without

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strong party organization their loosely framed and cumbersome governmental system would not give satisfaction. This is the reason why party politics have had such an influence on municipal government. This is why the "boss" has developed where he has in the United States — not in the government, as in England, but outside of it and in the party.

That the party has broken down under the load thus placed upon it, is not to be doubted. The present unsatisfactory system of nominations is ample evidence of that fact. But that the unsatisfactory character of our government is the fault of democracy is more than doubtful. This fact is proved by Mr. Godkin's book — almost unconsciously to the author — in the chapter on "The Australian Democracy." There it is shown that democracy in Australia developed under the influence of recent English political conditions. The whole governmental system is more concentrated than in the United States; and the result is, as Mr. Godkin says, that "the caucus ruled by the boss is hardly possible." Many of the "unforeseen tendencies" of democracy do not develop under such a governmental system. Many of these tendencies thus appear to be not so much the tendencies of the social and political conditions we call democracy as the tendencies of a certain form of governmental organization. For it cannot be said that Australian democracy is less democratic than the American democracy. As a matter of fact, the governmental system enjoyed by Australia — as well as by England itself — is in many respects more democratic than the governmental system in the United States. It certainly permits of a quicker execution of the public will. The truth is, that the American democracy lives under a governmental system established in an age which, as compared with the present, was aristocratic; and its tendencies are largely the results of its attempts to make that system conform to modern ideas. The failure as yet to achieve this end should not be ascribed to any fault in the democratic idea. Eventual success in the attempt will, it is to be hoped, do much to rehabilitate democracy in the minds of its critics.

FRANK J. GOODNOW.

La Questione dei negri. Di ENRICO MORSELLI. Torino, Fratelli Bocca, 1898. — 485 pp.

There are so many interesting features in Professor Morselli's study of the negro problem that one scarcely knows where to bestow praise or criticism in a short review. The reader is sure to be impressed with the author's breadth of view, and with his appreciation of the political and social life, the sentiments and influences that

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have resulted from the existence of slavery and the continued presence of the negro among us. His treatment, too, is genuinely scientific. Yet the book is not without its defects.

To prepare the reader for a full understanding of the problem, the author traces the rise and spread of slavery in the United States, and sets forth the economic and climatic causes of its decadence in the North. Then follows a statement of the reasons for the persistency of slavery in the South and of its effects upon Southern society. The result, he shows, was two distinct societies, — the North and the South, — between which there was a diversity of interest which perpetually threatened the dissolution of the Union, until the abolition movement finally triumphed in emancipation. With emancipation began the real problem, the appreciation of which necessitates a careful study of negro aptitudes and characteristics — mental, moral and physical. Thus prepared, we are in a position to understand the problem and the difficulties in the way of its solution.

Briefly stated, the problem is one of race prejudices and hatreds; or it is only "the reflex of the cruel contrast between the theoretical equality of the two races and the actual inequality created by their mutual aversions and different degrees of development" (p. 424). It is, however, to the mutual interest of both races that this antagonism should cease; since, before either can attain its highest development, it must acknowledge some common bond which shall insure a harmonious life.

To effect this change is the real problem, and our author apparently fails fully to appreciate the difficulties of its solution. Such "pseudo-solutions" as wholesale colonization, the fusion of the two races or the elimination of one of them, are rightly rejected as impracticable. The solution must be, he thinks, a natural one — by a slow process of evolution, not by any heroic remedies. This "natural" solution is to be found in "social fusion" (p. 446). Aye, there is the rub! Equality is admitted to be a condition of such "fusion," while the negro is admittedly inferior in his intellectual, moral, religious, economic and morphologic development. But, the author holds, the negro not only is not inferior in potential capacities, but he has a peculiar imitative faculty. Since morphologic changes follow, but do not precede, functional changes, the preliminary step to social fusion must be the economic, intellectual and spiritual development of the negro. It will, no doubt, take centuries of such development to raise the negro to an equality with the "Anglo-American," as a preliminary to complete social fusion; but fusion is sure to come as fast as there is development towards equality.

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Possibly; certainly this "natural solution" would be easy and effective, if we could make sure that facts would harmonize with the theory. But at bottom is there not in this solution as much of the ideal, and as little of the practical, as in the rejected pseudo-solutions? Let us see. Granting not only the possibility, but the certainty, of the ultimate development of the negro race in America to an equality with the white race; and granting, further, that the bond of fellowship created by intellectual and moral equality has sufficient centripetal force to counteract all social centrifugal forces, the validity of the solution is granted. But can such assumptions fairly be made? That the negro has great capabilities needs no proof. But, as Signor Morselli himself shows, he cannot withstand the Northern climate. The conclusion is evident. Again, intellectual development involves economic development to an equality in economic efficiency. But opposed to this are both natural and artificial obstacles. If it is true that the negro is destined to life in a warm climate, his labor efficiency must suffer under our climatic influences. More than this he is, with one or two exceptions, excluded from all trades unions, and hence practically excluded from the skilled trades. So true is this that only recently it has been held that the negro seems destined to confine his economic activity to the wearing of the white apron. And with the constantly growing intensity in labor competition, the difficulty of rising will constantly increase, the competition in his case tending to become the more bitter on account of race prejudices. In short, before those conditions are possible which make for social fusion, and so for the dissolution of race hatred, the race hatred must itself have disappeared. That is, the problem must be solved before the solvent of social fusion can become operative.

Apart from this, does the social-fusion theory square with sociological facts? Is not its centripetal force overestimated by neglecting important factors? Common intellectual and moral interests, like all other interests that produce a "consciousness of kind," no doubt afford a basis for fusion. But are such interests strong enough to overbalance such opposing forces as spring from differences of color, from previous conditions and inherited prejudices, from a want of common traditions and customs, and from peculiarities of morphology? As a practical solution, it appears, the theory of social fusion is questionable, both on account of the doubtfulness of its assumptions and the remoteness of its results. In brief, the solution is ideal rather than practical.

STEPHEN F. WESTON.

WESTERN RESERVE UNIVERSITY.

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Der Zug nach der Stadt. Statistische Studien über Vorgänge der Bevölkerungsbewegung im Deutschen Reiche. Von DR. R. KUCZYNSKI. (Münchener Volkswirthschaftliche Studien, No. XXIV.) Stuttgart, Verlag der J. G. Cotta'schen Buchhandlung, 1897. — viii, 284 pp.

Dr. Kuczynski's treatment of the problems of city growth is, on the whole, destructive, inasmuch as he directs his main arguments against the theories of Georg Hansen and Otto Ammon. Hansen's *Drei Bevölkerungsstufen*, published in 1889, has had a very considerable influence. No less a scholar than Professor Wagner praises it and accepts its main conclusions, while in practical politics it has become the text-book of the Agrarian party. Heinrich Sohnrey has written a book (*Der Zug vom Lande und die sociale Revolution*) and several pamphlets, and has founded a paper (*Das Land*) to carry out Hansen's idea that the only way to secure the well-being of the nation is to preserve the peasantry or agricultural class, now rapidly flowing from the fields to the "men-consuming cities." One of Hansen's most devoted disciples is Otto Ammon, the Karlsruhe anthropologist, whose quasi-scientific works (*Die natürliche Auslese beim Menschen* and *Die Gesellschaftsordnung*) are explicitly based on Hansen's theory, although they really present important modifications.

Dr. Kuczynski's critical work is well done — perhaps too well done, for the statistical methods of Hansen and Ammon are too patently unscientific to require very detailed analysis. Hansen, for example, notes that in 1871–75 the births in Munich barely equalled the deaths, and forthwith adopts the mediæval point of view that the cities would soon decline in population if the influx of countrymen were to cease. True, many of the Italian cities which still lack modern sanitation do still exhibit a deficiency instead of a surplus of births; and the same may be said of a few cities in France, where the birth-rate is exceptionally low. But elsewhere in the Western world the great cities regularly enjoy an annual *natural* increase of population. Dr. Kuczynski gives a table showing that not one of the larger German cities has experienced a deficit of births in any year since the war of 1870–71, except Königsberg (1873), Hamburg (cholera, 1892) and Munich (typhoid fever, cholera, 1872–74)!

There are doubtless some who would disagree with Dr. Kuczynski's choice of emphasis. The twenty-five pages that he devotes to the effect of military garrisons on figures of migration might be abbreviated. His refutation of Hansen's idea that the city-born are found in the lowest and most poorly paid occupations, while the country-

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born are found in the higher employments, could have been made complete, as Dr. Kuczynski suspects, by a careful analysis of the Berlin occupation statistics. The Austrian census of 1891, in its summaries for Vienna, absolutely disproves Hansen's contention; but Dr. Kuczynski confined himself at the outset to German statistics. Ammon's practice of generalizing from very insufficient data is well exposed by Dr. Kuczynski, although it must be said that other and more recent investigations by Lapouge and others have tended to confirm Ammon's observations.

The most valuable portion of the work under review is, after all, contained in the second and fourth appendices, where much new material is presented. It is shown, for instance, that the migration cityward is no new thing in Germany. Hence the present decline in the death-rate cannot be explained by the filling up of the age classes 15–35, *i.e.* the healthiest period of life. Still more interesting is the demonstration that the death-rate of cities in Bavaria has become as low as that of the rural districts, the large cities fairly outdoing the smaller cities and towns. This is noticeably the case with infant mortality — that decisive test of a locality's healthfulness. In Bavaria it appears "that in the years 1876–81 the cities had a greater infantile mortality than the country. Since 1882, however, the cities exhibit — except in the years 1886 and 1893 — a distinctly more favorable rate than the rural districts (*Bezirksämter*)."

CORNELL UNIVERSITY. A. F. WEBER.

Evolutional Ethics and Animal Psychology. By E. P. EVANS. New York, D. Appleton & Co., 1898. — 386 pp.

The Psychology of Suggestion. A research into the subconscious nature of man and society. By BORIS SIDIS. New York, D. Appleton & Co., 1898. — vii, 379 pp.

The suggestiveness of all the facts connected with the community life of bees and ants is so great that no research into "evolutional ethics and animal psychology" can fail to interest the student of political and social phenomena. It cannot be said, however, that Mr. Evans's work has rendered much service to political science. The author has the knack of threading his line of argument with amusing incidents, quotations and *bons mots*. This makes his book easy to read, and to those who are interested in animal psychology the work can be recommended; but it adds little to the information we already have in the works of such men as Romanes, Kropotkin,

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Lubbock and Lloyd Morgan. Moreover, there is in it some loose writing, which occasionally results in positive error. For example, it is hardly possible that an author who has read as much regarding animal evolution as Mr. Evans, can fail to know the extent to which the Lamarckian theory, that acquired characteristics are inherited, has been disputed, and, one might almost say, disproved; and yet, not only does the author fail to treat this important question, but he even seems to beg it in a casual statement that

> a pointer, greyhound, or collie, inherits and transmits to its offspring not only race attributes, but also acquired aptitudes, in the same manner and to the same degree as a human being does who is distinguished for some special faculty.

The book of Dr. Boris Sidis is a much more valuable contribution, not only to the general reader, but to the political student. Few branches of political science are more important than those which study the operation of social institutions upon man, and endeavor to derive from it some conclusions as regards the wisdom of these institutions. Obviously, no sound conclusions can be reached in this department of political science, unless the student has a clear and correct understanding of the human machine, and especially of that part of the human machine known as the social mind. It is for the light which this book throws on the social mind, that it may have a special value to readers of this review.

Not only does the author present an interesting summary of much that has been done and written on the topic of suggestibility in general, but he also describes some new and interesting experiments on the effect of suggestibility upon people under normal conditions. Most experimenters and writers on this topic have dealt either with abnormal subjects under normal conditions or with normal subjects under abnormal conditions. Dr. Sidis has experimented upon a large number of perfectly healthy men and women without the assistance or confusion resulting from a hypnotic condition. He has thus come to certain interesting conclusions regarding the effect of suggestibility upon the healthy subject, as distinguished from the effect of suggestibility upon the unhealthy subject. Moreover, the effect of these and other experiments has contributed to distinguish with added clearness that part of the human mind which differentiates it from the mind of lower animals; and the conclusions drawn therefrom are applied to the study of man in his social habits — in other words, to the social mind.

If this book does no more than call attention to the paramount

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importance which subconscious action has in the lives of men, and therefore to the paramount importance of recognizing the force of habit in counteracting the effect of political institutions and political reforms, it will have rendered no small service; but it perhaps renders a still greater service by suggesting lines of inquiry of a psycho-physiological character, which no political student who wants to arrive at practical conclusions can afford to disregard.

COLUMBIA UNIVERSITY. EDMOND KELLY.

La Lutte contre le mal. Par J. J. CLAMAGERAU, Senateur. Paris, Félix Alcan, 1897. — 310 pp.

French views of social problems, if not always important, are always interesting. The reflections of M. Clamagerau have a degree of importance as an expression of conservative Republican sentiment. If not strikingly original or profound, the senator is at least honest and plain-spoken; and his long and respectable career — approaching, indeed, the heroic, in his opposition to the Second Empire and his trial as one of the "thirteen" in 1864 — lends weight to his words. The burden of this book is a warning against excessive extension of governmental functions, on the one hand, and against unlimited freedom of industrial combination, on the other. Of the three general agencies in the struggle against evil, *viz.*, individual effort, government and voluntary organizations, the last two are treated at length; we thus have here a general ethical discussion of current social problems in France, with particular reference to the proper sphere of governmental control. The work makes no pretension to technical or philosophical completeness, and therefore should not be criticised from the point of view of economic theory. It seems fitting, however, to note certain statements pertinent to the economic policies upon which party lines are to-day drawn in France.

M. Clamagerau finds some of the most important preliminary steps towards socialism in government ownership of railroads, and he deprecates the extension of that policy as a blind surrender to irresponsible labor leaders. He says:

> L'administration d'État, dans ces projets, n'est qu'une sorte de trompe-l'œil, derrière lequel se cache l'administration par des syndicats d'employés et d'ouvriers, syndicats obligatoires, intangible, autorisés à faire grève sur l'ordre de leur chefs.

The present agitation in the interest of socialistic extensions of state activity he ascribes in large part to the two great wars of recent

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years — the war of secession in the United States and the Franco-German war. The first, he says, resulted, through the establishment of the protective tariff policy, in a system of reprisals against France and England, and in the strict subordination of the planters of the South to the manufacturers and bankers of the North. The Franco-German war, he thinks, was deliberately planned, for the purpose of exalting the state and effacing the individual, by "l'homme d'État prussien qui, par une fausse dépêche, précipitait perfidement l'une contre l'autre l'Allemagne et la France." This tendency is also strengthened by the extension of the pension system — an extension which, with some reason, he describes as "absolument monstreuse aux États-Unis," and very considerable in France. In general, he concludes: "L'intervention du pouvoir social ne peut être efficace et bienfaisante, si l'initiative individuelle est comprimée. . . . Avec des anneaux de plomb, on ne fera jamais une chaîne d'or."

With respect to labor organizations it is shown that for the protection of the workingmen themselves, as well as of the interests of society generally, the law should be more stringent. The law of 1884 freely permits organization, requiring only that the rules and the names of the officers be recorded with the head of the local government. It is deemed necessary to the preservation of rights that the members be protected against secret decrees of directors and the possible misappropriation of funds. "*L'idéal, c'est l'association libre.*" In the attainment of this ideal, the members of these associations can accomplish much within their organizations by refusing to be led by mere adventurers, and can also contribute greatly to the enactment of wise legislation by insisting that their leaders study the questions before them and act according to sound economic principles. The French "*syndicats*" include, as their most active element, the "*syndicats agricoles.*" These have increased in numbers most rapidly in recent years and are most advanced in the introduction of coöperative measures.

M. Clamageran shows an appreciative and intelligent comprehension of industrial conditions. His basis of improvement is the conservation of a well-regulated individual liberty. This can be assured only by voluntary social organization, not by the aggrandizement of government:

> Nous arrivons à cette conclusion que le pire ennemi de l'association, c'est le socialisme, le socialisme révolutionnaire surtout, mais aussi le socialisme si cher aux docteurs d'outre Rhin, le socialisme d'État.

C. M. LACEY SITES.

COLUMBIA UNIVERSITY.

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Agrarpolitik. Ein Lehrbuch. Von Dr. LUJO BRENTANO. Teil I: *Theoretische Einleitung in die Agrarpolitik.* Stuttgart, Verlag der J. G. Cotta'schen Buchhandlung Nachfolger, 1897. — viii, 145 pp.

This little book consists of the introductory lectures given by Professor Brentano in his course on agrarian problems at the University of Munich. In it an attempt is made to state the principles which govern the use of the productive factor, land, when it is employed for agricultural purposes.

The value of land, the author says, is due partly to its monopolistic character as a portion of the earth's surface, limited in amount and incapable of increase by means of human exertion; but it is also due in part to the physical and chemical qualities of the soil, which can be increased or diminished by man's efforts. The greater the increase of these physical and chemical powers of land through human effort, the more does land partake of the nature of capital goods. Under a system of intensive cultivation, so much labor and capital may be expended upon a piece of land that the original qualities of the soil become of comparatively little importance in fixing the value of the land. The land then appears to be little more than a receptacle for the uses of labor and capital: it becomes, except for its quality of superficial area, itself entirely a product.

The interests of society in general, as well as those of the agricultural classes in particular, he continues, are best conserved by keeping the price of land and its rent as nearly as possible dependent upon its power to produce, rather than upon its power as a monopoly good. An increase in the price of land due to its character as a monopoly is to the advantage of a privileged class, the owners of this monopoly, but is at the expense of the remainder of society. The rent of land may, however, be raised without any reference to the monopolistic character of the land, or without any increase in the price of the products of the land: anything which increases the productive power of the land faster than it increases the expenses of production, increases the rent of the land.

Intensive cultivation is possible in several ways without subjecting the productivity of the land to the law of diminishing returns. If the cultivation of one crop becomes unprofitable, recourse may be had to other crops or to a system of rotation. When this mode of production becomes, in its turn, unprofitable, the farmer can still further postpone the effects of the law by working up the products of the land into commodities, such as cheese, butter, beer, *etc.*, which have a higher market value than the raw products.

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German agriculture has been for some time beyond the point where, by means of more intensive cultivation, the entire cereal crop demanded by the needs of the German people can be raised in a profitable manner. Without a great decline in the cost of production, the more intensive cultivation of a single product will succeed only on the most fertile lands, or on those most favorably situated with respect to markets. But the supply of these lands in Germany is not sufficient to produce the entire food supply without resorting to a system of cultivation in itself unprofitable. Only a few German farmers — and those few not the ones who have suffered most from American, Russian and Indian competition — have seen that the way out of their difficulties lies in such a change in their agricultural economy as will bring with it a greater yield in produce and, with this, a rise in rents. The majority of the farmers have seized upon the means which the monopolistic character of the land offers for raising rents without any increase in the productivity of the land. By high protective tariffs or by the reintroduction of the silver standard, they hope to raise the price of their products and thus the value of the land. Neither of these measures, says Brentano, would give any permanent advantage to German agriculture. The present failure of German agriculture to meet American and Russian competition is due, not to the higher prices of labor and capital in Germany, but to the higher value of land. Anything which increases the rent without increasing the yield of the land will raise the price of land still higher, not only absolutely, but relatively. Such a change would be an advantage to present possessors of the land, but not to their successors or to society in general.

Intensive cultivation, he argues, is favored by any measure which increases the interest of the cultivator in the land — such as a change from communal tenure to private ownership, or changes in legislation which permit of an easier disposal of land. The work of the Berlin Agrarian Conference of 1894 is criticised, because, while it set out with a worthy purpose in view,— the keeping down of the price of the land at a point corresponding to its greatest productivity, — it attempted to accomplish this by recommending a system of entails and limitations on the right of mortgage indebtedness. Such advantages as would be gained by these measures would be shared by only a few persons. So, too, the Prussian legislation of 1896, which introduced the privilege of rent purchase of land, with or without the aid of the state finances, — although it was at first, in the original form in which the bill was presented, a practicable and

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commendable measure, — was rendered nugatory by concessions to the large landowners and was, as finally passed, a retrogression from the law of 1894.

The book is a strong plea for the maintenance and utmost extension of the right of private property in land and for the greatest possible freedom in the transfer of land by sale or bequest.

UNIVERSITY OF ILLINOIS. M. B. HAMMOND.

Report and Proceedings of the Joint Committee of the Senate and Assembly of New York, Appointed to Investigate Trusts. Albany, State Printers, 1897. — 1223 pp.

This report is one of the most interesting and serviceable documents in the literature of the trust problem in this country. The investigation, which was held during February, 1897, dealt with trusts in the sugar, soda, tobacco, wall paper, coal and rubber industries. The sugar trust occupied the largest share of attention, and more than half of the testimony related to it. While the new facts brought out in this investigation are not of a startling character or of great significance, the report is one of much interest; and its chief merit consists, perhaps, in the systematic order in which the facts of the problem are developed and presented.

Naturally, the subject of price, or the relation of the trust to the consumer, was given careful consideration. The testimony in regard to sugar, briefly summarized, shows that, taking a period of nine years before the trust, the margin between the average cost of raw sugar per pound and the average cost of refined sugar was 1.9 cents per pound, while for the period of nine years after the trust the margin was .98 of a cent; thus there was a reduction in the cost of refining of about a cent per pound (p. 168). Taking the period of five years immediately preceding the formation of the trust, the margin between the cost of raw sugar and the cost of the refined product was .853 of a cent; while for a period of five years immediately following the formation of the trust it was 1.01 cents, and for nine years, or the whole period of the trust, it was .981 of a cent. Computing on this basis, it was figured out that the trust cost the consumer about $3,400,000 annually. But the trust claimed that, owing to its immense purchasing power, it had been able to hold the price of raw sugar down, and that the decline in the price of raw sugar was due to the power of this company as a buyer in the market. The reduction in the price of the refined sugar, made possible partly by

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the decline in the price of raw sugar, was one of the advantages which the consumer had enjoyed as a result of the consolidation (pp. 437, 438). The testimony with regard to prices in other industries was not more definite.

It would be unsafe to attribute great value to such figures. On the whole, the testimony does not afford conclusive proof that the interests of the consumer have been injuriously affected. Prices have been made stable; and, if the consumer has suffered, this has happened mainly because he has not received his full share of the reduction in cost. The testimony certainly developed no positive ground which would warrant interference with prices in the consumer's interest. The inductive study of trust prices, however, like the inductive study of railroad rates, does not always give data for trustworthy conclusions. Where a trust markets a variety of goods or many grades of the same goods, to determine what is a reasonable price is a problem of nearly as much complexity as to determine what is a reasonable rate.

The subject of capitalization also received attention; but, as in previous investigations, all efforts to ascertain the facts and to discover the methods of computing the values represented by stock issues proved ineffectual. All that the testimony shows is that capitalizing property at its earning capacity and distributing a large amount of the stock to the speculating and investing public is a lucrative source of profit to those who have such projects in hand; but definite information on these points cannot easily be obtained.

The evidence relating to labor seems to show that, if labor is displaced at the time of the formation of a trust, the increase of production soon makes necessary the employment of new labor. Thus the consumption of sugar has increased about forty per cent in the last ten years (p. 409) and there has also been a large increase of production in the other trusts.

An interesting feature of the testimony is the description of trust formation by methods of "promotion." Of late years the initiative in the movements for the formation of trusts has, in many cases, come from persons who were not directly interested as producers in the industries concerned. The promoter's methods illustrate how "natural laws" are assisted by "intelligence of a higher order."

It is to be regretted that more extended inquiry was not made, to ascertain the degree in which a trust is influenced by the possibility of new competition in the industry. Supposing perfect equality of legal conditions, it is possible that a trust may control an industry

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for the reason that its low cost of production enables it to make a profit, while the price would not yield a sufficient profit to a smaller producer. On this point a debate of some interest was carried on (p. 953); but throughout the investigation it seems to have been assumed that no combination of this kind could control an industry by methods that were perfectly fair. Copies of the laws, passed by Congress and by the several states, relating to trusts, combinations and monopolies are given at the end of the testimony.

The tone of the report of the committee is distinctly unfavorable to these combinations, but it is not optimistic with regard to remedies. The main remedy suggested is an amendment to the constitution, giving Congress greater power of control over industry. The evils of the trust that are most vigorously condemned, while gross and palpable, seem to be rather incidental to its operation than inherent in its nature; and a better understanding of the trust might be obtained if we could dissociate its theory from its history.

F. W. HOWARD.

NEW YORK.

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RECORD OF POLITICAL EVENTS.

[From November 11, 1897 to May 10, 1898.]

I. THE UNITED STATES.

THE INTERVENTION IN CUBA. — President McKinley's policy in reference to the Cuban situation was publicly announced for the first time in his annual message, December 6. It was declared therein that through Minister Woodford Spain had been asked to take steps to terminate the existing conditions and effect that restoration of order in Cuba for which the United States could not wait indefinitely. In response to this demand the Sagasta government had announced its purpose to institute at once an autonomous *régime* for Cuba and so to modify the conduct of hostilities as to ameliorate the existing conditions; and had further urged upon the United States the necessity of enforcing its neutral obligations, in which case the complete pacification of the island would soon be effected. Mr. McKinley brushed aside the imputation that the United States had failed in its duty; but, after an examination of all phases of the situation, concluded that the time had not yet come for recognition of the insurgents either as belligerents or as independent, or for intervention to end the war. "It is honestly due to Spain," he said, ". . . that she should be given a reasonable chance . . . to prove the asserted efficacy of the new order of things. But if it shall hereafter appear to be a duty imposed by our obligations to ourselves, to civilization and humanity, to intervene with force, it shall be without fault on our part, and only because the necessity for such action will be so clear as to command the support and approval of the civilized world." For two months subsequent to the publication of the message, pending the development of the Spanish government's new policy (see below, p. 383), President McKinley's chief activity in connection with Cuba consisted in efforts to ameliorate the condition of the "*reconcentrados*." The reports of Consul-General Lee and the other consular officers revealed a horrible prevalence of disease and starvation among these people, who, shut up in the towns by the decrees of General Weyler, had no means of procuring subsistence. Neither private nor governmental charity in Cuba itself was at all adequate to deal with the situation. On December 24 Secretary of State Sherman issued, in the name of the President, an appeal to the public for contributions for the sufferers, announcing that the Spanish authorities had agreed to admit free of duty all articles for that purpose. This appeal was followed on January 8 by another, which announced the appointment of a "Central Cuban Relief Committee," with headquarters at New York, through which the accumulation, forwarding and distribution of supplies was thoroughly organized. Up to the end of March, when the

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danger of war caused a suspension of operations, over 2000 tons of supplies had been shipped and more than $110,000 in cash had been raised. — Early in February occurred the first of the series of events which precipitated a crisis in our relations with Spain. On the 8th of that month the Junta, representing the Cuban insurgents in New York, published a private letter from the Spanish minister at Washington, Señor Dupuy de Lome, to Señor Canalejas, a Spanish newspaper editor. The letter had been stolen from the mail by a Cuban sympathizer. It referred to President McKinley as a weak man "catering to the rabble," and as a mere "politicaster," seeking to stand well both with the writer and with the "jingoes of his party." Acknowledging the authenticity of the letter, Señor de Lome promptly cabled his resignation to Madrid, anticipating the demand for his recall which was made by our government. On the 14th the administration received from the Spanish government a satisfactory disclaimer of any share in the objectionable sentiments, and the incident was declared closed. On the next day, and while American public sentiment was yet in a state of exasperation over the de Lome affair, occurred the **destruction of the *Maine*** in the harbor of Havana. The battleship had been sent to Havana on January 24, in consequence of representations by consular officers that American lives and property were in danger from the anti-autonomy rioters (see below, p. 384). As officially stated, however, the purpose of sending the ship was merely that of resuming friendly naval relations with Spain. At the same time a Spanish cruiser had been ordered to visit New York. At a little before ten o'clock, on the evening of February 15, an explosion at the forward part of the *Maine* sunk the vessel and caused the death of 266 of the crew. The Spanish officials at Havana did everything possible to rescue and relieve the survivors of the disaster and bestowed impressive funeral honors upon the dead. A board of inquiry was at once constituted by our government to investigate the cause of the explosion, and a parallel investigation was instituted by Spain, after a proposition for a joint commission had been declined by the United States. In response to the earnest demand of the administration public opinion as to the cause of the explosion was very generally suspended during the proceedings of the board of inquiry, which were carefully kept secret. Evidence was abundant, however, that popular thought was keenly sensitive to the situation. Contributions to the Cuban relief committee enormously increased. An intimation by Spain early in March that she would be pleased with the recall of Consul-General Lee from Havana gave rise to numerous manifestations of popular hostility throughout the country. At the instance of our administration Spain withdrew her objections to Lee. On March 17 a very profound impression was produced on public opinion by an address by Mr. Proctor, of Vermont, in the Senate, stating the result of his personal observations during a recent visit to Cuba. In a dispassionate manner he described the desolation of the island, the misery of the *reconcentrados* and the inefficacy of the Spanish campaign, and

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revealed a strong conviction that independence embodied the only solution of all the problems. Other senators testified to the same effect, though, on account of the circumstances under which their observations had been made and the manner in which their conclusions were stated, their opinions had less influence than those of Senator Proctor. The warlike trend of public sentiment received decisive confirmation when, on March 28, the report of the *Maine* court of inquiry was made public. The finding of the court was that the ship was destroyed by the explosion of a submarine mine, which caused the partial explosion of her magazines; but that no evidence had been obtainable fixing the responsibility for the destruction of the vessel. This report was transmitted to Congress with a message from the President, in which he merely described the affair, summarized the court's conclusions and stated that he had communicated the report to the Spanish government. On the same day the administration was notified of the conclusion of the Spanish investigating commission, to the effect that the explosion was due, not to a mine or torpedo, but to some interior cause. — Meanwhile the negotiations which had been in progress throughout the winter had reached the point of a **diplomatic impasse.** On March 27 President McKinley, having concluded that the time had come for an immediate termination of the war in Cuba, proposed to Spain (1) an armistice till October 1, "for the negotiation of peace with the good offices of the President"; (2) the entire revocation of the concentration decrees and the restoration of all the *reconcentrados* to their homes; and (3) the relief of the needy by provisions and supplies from the United States, distributed in coöperation with the Spanish authorities. To these demands Spain replied on the 31st, offering to confide the preparation of peace to the Cuban Parliament, which was to meet on May 4; agreeing to accept a suspension of hostilities if asked for by the insurgents; announcing that the concentration orders had been revoked, the relief of the needy by the United States agreed to, and $600,000 appropriated to aid in this work; and offering to submit to arbitration the question of fact as to the cause of the *Maine* disaster. The President let it be officially announced, April 1, that the Spanish reply was unsatisfactory, and that he would refer the matter to Congress as soon as a message could be prepared. The message was in fact not sent in till the 11th, the delay being due in part to the request of Consul-General Lee that opportunity be given for the departure of all the American citizens and consuls from Cuba. Pending the appearance of the message, amid general excitement and expectation of war, especially significant events were as follows: (1) An appeal to the President by the ministry of the autonomous Cuban government, protesting that home rule was an accomplished fact in Cuba, that the autonomist government represented a majority of the free Cuban people, and that interference by the United States would be unjust and oppressive. (2) A public declaration by a representative of the insurgent Junta in New York that intervention by the United States without previous recognition of the Cuban Republic would be

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regarded by the insurgents as hostile to themselves, and that any attempt to extend a protectorate over Cuba would be resisted by the insurgents by force of arms. (3) The presentation of a joint note by the representatives at Washington of the six great powers of Europe, expressive of the hope that further negotiations might secure peace, with the necessary guaranties of order in Cuba. (4) The proclamation by Spain, April 10, of a general and unconditional armistice in Cuba, the act being officially ascribed to the influence of the Pope. On the 9th the last of the Americans, headed by Consul-General Lee, sailed from Havana for Key West, and on Monday, the 11th, the President's message, together with copious extracts from the consular reports on Cuba, was laid before Congress. It reviewed the civil and military situation in Cuba since the outbreak of insurrection; announced the diplomatic *impasse* described above; argued that neither recognition of belligerency to the insurgents nor of independence to "the so-called Cuban Republic" was expedient under existing circumstances; and concluded that intervention as an impartial neutral was the only feasible and just way remaining to bring an end to the war. Such intervention, the President declared, was justifiable on general grounds of humanity, for the special protection of our own citizens in Cuba, for relief to our suffering trade and industry, and especially because "the present condition of affairs in Cuba is a constant menace to our peace and entails upon this government an enormous expense." The *Maine* affair was cited to illustrate the intolerable situation. In conclusion the President declared that "in the name of humanity, in the name of civilization, in behalf of endangered American interests, the war in Cuba must stop." Accordingly he asked Congress to authorize and empower him to terminate the war, to secure a "stable government" in Cuba, "capable of maintaining order and observing its international obligations," and to employ the army and navy for these purposes. In a postscript he called attention to the armistice just proclaimed by Spain and asked that it have due consideration. — There was no doubt as to what would be the nature of the **action of Congress.** Throughout the session the desire for intervention had been very conspicuous in all parties, especially after the *Maine* affair. When early in March the administration asked for money to prepare for the national defense, an appropriation of $50,000,000 had been voted unanimously by both houses. Upon the reception of the President's message just described resolutions were promptly passed, of which the Senate form differed from that of the House chiefly (1) in "directing" instead of merely "empowering" the President to intervene, and (2) in recognizing the existing Cuban Republic. A conference committee's report was finally adopted in the early morning of April 19, by 42 to 35 in the Senate, and 171 to 121 in the House. The final form of the resolutions declared that "the people" of Cuba "are and of right ought to be free and independent"; demanded that Spain "at once relinquish its authority and government" in Cuba; "directed and empowered" the President to use the army and navy and the militia to enforce the resolutions;

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and disclaimed for the United States any intention to "exercise sovereignty, jurisdiction or control over said island except for the pacification thereof." On the 20th the President approved the joint resolution and sent an ultimatum to Spain.

THE WAR WITH SPAIN. — Upon the publication of the President's message of April 11 the Spanish government had announced that it would resist the policy indicated therein, as incompatible with the sovereignty of Spain. Accordingly **the rupture** became inevitable. When on the 20th the ultimatum, demanding compliance with the resolution of Congress by the 23d, was presented to the Spanish minister at Washington, he at once asked for his passports and took train for Canada. On the following day Minister Woodford, at Madrid, before he had time to present the ultimatum, was notified by the Spanish government that the approval by the President of the resolution of Congress was equivalent to a declaration of war, and that diplomatic relations between the two countries had ceased. Mr. Woodford withdrew to France on the same day. Hostilities at once began, but in order to define the situation with precision a formal declaration that war had existed since the 21st was passed by Congress, without division, on the 25th. — The American **attitude toward privateering and neutrals** was defined in a note addressed to the foreign powers on the 22d, in which it was declared to be the policy of the United States to abstain from privateering, to exempt from confiscation enemies' goods under a neutral flag and neutral goods under an enemy's flag, save contraband of war, and to regard blockades as binding only if effective. Spain's position was defined in a decree of the 24th to substantially the same effect, save that the right to resort to privateers was specifically reserved, though for the present it was declared that only auxiliary cruisers under naval control would be employed. Both nations announced that the right of search for contraband would be exercised in conformity to international law. The customary proclamations of neutrality were issued by the powers, beginning with Great Britain on the 26th. Preparations for **naval hostilities** began in both Spain and the United States early in March. Agents of both governments competed eagerly for the purchase of war ships building for other nations, but the superior financial resources of the United States, especially after the appropriation of $50,000,000, noted above, determined the matter generally in her favor. Two new Brazilian cruisers were secured by the United States in England, of which, however, only one could be got away before war began. The most successful efforts were those directed to the creation of auxiliary fleets from the mercantile marine. Most of the $25,000,000 expended by our Navy Department up to the end of April was devoted to this purpose. A systematic inspection was instituted in all our ports of ships available for conversion into cruisers, while fast yachts and ocean-going tugs were sought for conversion into torpedo and dispatch boats. By the beginning of hostilities a very respectable auxiliary fleet had been duly equipped and manned, the most effective vessels being the four huge

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steamers of the American transatlantic passenger line. By means of the cruisers, together with the so-called "mosquito fleet" of yachts and tugs, an extensive system of coast patrol was organized. By the outbreak of hostilities the ships of the regular navy had been concentrated for the most part in three squadrons, stationed respectively at Key West, Hampton Roads and Hong Kong. On April 22 President McKinley proclaimed a blockade of the north coast of Cuba from Cardenas to Bahia Honda (including Havana and Matanzas) and of the port of Cienfuegos on the south coast; and the Key West squadron, under Admiral Sampson, moved across and established the blockade. A number of Spanish merchantmen were taken, demonstrations were made at several points on the coast, and communication was established with the insurgents. Spain meanwhile had gathered a squadron at the Cape Verde Islands and another at Manila in the Philippines, in addition to the vessels at Cadiz and other home ports. The first engagement took place at Manila, May 1. Commodore Dewey, with the American squadron from Hong Kong, ran by the forts at the entrance to Manila Bay, attacked and totally destroyed the Spanish squadron, forced the land defenses at Cavite to surrender, and held Manila in his power under threat of bombardment. The Spanish lost over 600 men in the battle; the Americans had only a half-dozen men slightly wounded. Meanwhile the Spanish squadron at Cape Verde had left for the West Indies; while on May 4 Admiral Sampson, with a strong detachment of the blockading fleet at Cuba, sailed eastward, and at the close of this RECORD was approaching Porto Rico. — **The military preparations** on both sides consisted at first mainly in the strengthening of fortifications and the installation of systems of mines, in the important harbors. On April 16 the regular army of the United States was put in motion from the posts in all parts of the land to concentrate at Chickamauga, Tampa, New Orleans and Mobile. On the 23d the President called for 125,000 two-year volunteers, apportioned among the states, and the recruiting and organization of this force at once began. Four days later, upon the passage of the act increasing the regular army (see below, p. 373) the necessary orders were given for recruiting under its provisions. By the close of this RECORD the volunteer forces had assembled in the respective states, and steps had been taken to concentrate a large part of them at Chickamauga, Washington and San Francisco. On May 4 the President appointed eleven major-generals of volunteers, seven by promotion of brigadiers of the regular army, and four from civil life, namely, Fitzhugh Lee and Congressman Wheeler, formerly of the Confederate cavalry, J. H. Wilson, of the Federal cavalry in the Civil War, and Senator Sewell, of New Jersey, also a conspicuous Union officer in the Civil War.

PEACEFUL FOREIGN RELATIONS. — The matter of the seal fisheries advanced in the early part of the period under review to an apparently hopeless *impasse*, so far as our relations with Great Britain were concerned. The conference between the United States, Japan and Russia,

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which ended November 6 (see last RECORD), resulted in an agreement to put a stop to pelagic sealing. Four days later the representatives of Great Britain, Canada and the United States met. But here only the scientific experts took direct part in the proceedings, and the result of their deliberations, reached on the 16th, was merely an agreement on the facts as to the past and present of the Pribylov Island seal herd. Essential points in their conclusions were as follows: The herd has decreased since 1884 to one-third or one-fifth its former size; both land and pelagic killing are conducted in accordance with law; the latter industry, because it involves the taking of females, is more destructive to the herd than the former; pelagic sealing has of late fallen off in greater ratio than has the herd; the herd is not in present danger of actual extermination; and both land and pelagic killing yield, under existing conditions, inconsiderable profits. The United States sought to secure action looking to the prohibition of pelagic sealing; but Canada, through Sir Wilfred Laurier, who came in person to Washington, declined to consider this proposition save on condition that commercial reciprocity and other mooted questions were combined in the negotiations. This the United States declined, and in December applied to the British government direct with a proposition to suspend pelagic sealing. In January Lord Salisbury definitively refused to reopen the question. The joint commission for the settlement of claims for damages by Canadian sealers seized by the United States prior to the arbitration of 1893 (see RECORD for December, 1896, p. 765) reported in December an award of $281,181, with interest at seven per cent, making a total of about $470,000. — The treaty for **the annexation of Hawaii** was brought before the Senate and discussed in a desultory way during the winter. Doubt as to the possibility of ratification was general from the outset. In January President Dole, of the Hawaiian Republic, visited Washington, but his stay was short. By the middle of March the advocates of the treaty definitely abandoned the hope of securing the necessary two-thirds majority for ratification, and accordingly, on the 16th, the committee on foreign relations reported a joint resolution annexing the islands. The provisions of the resolution were identical with those of the treaty, and a bare majority of the Senate was in favor of annexation. In the presence of the tension with Spain, however, no effort was made to bring the Hawaiian matter forward for action.

INTERNAL ADMINISTRATION. — Changes in the cabinet have taken place as follows: In December Attorney-General McKenna was appointed associate judge of the Supreme Court, and his place in the cabinet was filled in the following month by Gov. J. W. Griggs, of New Jersey. Immediately after the outbreak of the war with Spain Mr. Sherman, whose increasing infirmity had precluded more than a nominal exercise of the duties of Secretary of State, resigned, and was succeeded by the first assistant secretary, William R. Day, of Ohio, by whom the actual work of the department had been conducted. Mr. Day was succeeded as first

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assistant secretary by Prof. J. B. Moore, of Columbia University, New York. Just before this Postmaster-General Gary resigned on account of ill-health and was succeeded by C. E. Smith, of Pennsylvania. — **The revenue** from the Dingley tariff manifested a tendency to increase during the winter, so that for the month of February the treasury was able to show a slight actual excess of receipts over expenditures. By that time, however, the deficit for the fiscal year had reached a total of about $53,000,000. The sum realized from the sale of the Union Pacific Railway (see last RECORD), being classed with the ordinary receipts, produced an apparent balance in the treasury's statements, though this sum must be devoted to the retirement of the Union Pacific bonds. With the approach of war the receipts declined so as to render new legislation imperative. — As to **the currency**, the conditions described in the last RECORD continued to operate to the advantage of the treasury and of the gold standard. Through heavy and long-continued importations of gold the treasury gold reserve rose by April to $175,000,000. In a number of ways the administration sought to promote the cause of currency reform ; but the development of the tension with Spain during February served to crowd the subject into the background. — The government's interest in **the Kansas Pacific Railway** was extinguished through sale of the property under foreclosure, February 16–18. The road was bid in by a reorganization committee of financiers, under an agreement with the administration by which the treasury was assured $6,303,000, the principal of the subsidy bonds issued by the United States and secured by second mortgage. The interest which had been paid by the government, amounting to $6,624,000, had to be sacrificed. — On December 17 the Dawes Commission concluded a treaty with the Seminole nation for the extinction of their tribal existence, under conditions similar to those already agreed to by the Choctaws and Chickasaws (see RECORD for June, 1897). — In connection with the discontent in Congress with the recent development of **civil service reform**, a Senate committee reported March 9, after investigation, that the classification had been too extensive, and that certain places included in the classified service should be removed therefrom; but the committee conceded that its function was purely advisory, and that the President's power to act or not in the matter was complete. In December Secretary Gage put in operation in the Treasury Department an order reducing to $900 per annum the salaries of all clerks seventy years of age or over. The purpose and effect of the order was to establish a civil pension list, since it was announced that an "honorable service roll" would be created, and that all aged clerks placed thereon might expect a diminution of their work.

CONGRESS. — The second session of the Fifty-fifth Congress opened December 6. In President McKinley's **Annual Message** the position of first importance was given to the currency problem, a solution of which, on the lines of the plan formulated by Secretary Gage, was urgently recommended. As to foreign policy, besides the discussion of the Cuban ques-

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tion, noticed above, the message commented upon the importance of Hawaiian annexation, described the negotiations that had been carried on looking to international bimetallism, and stated that negotiations for reciprocity under the Dingley Tariff Act were in progress. As to questions of internal policy, the President dwelt on the importance of increasing the docking facilities on each of our coasts to a point that should be commensurate with the needs of our increased navy, and recommended an additional battleship for the Pacific and a number of additional torpedo boats; described the conditions prevailing in the Indian Territory, and intimated that, if the negotiations by the Dawes Commission should fail, drastic action by Congress would be necessary in order to terminate the evils of the tribal *régime;* and, in connection with the approaching sale of the Kansas Pacific Railway, submitted to Congress the question whether it was desirable for the government, in order to protect itself from the loss of three-fifths of its claim against the road, to become a bidder and therefore the owner of the property. — Beyond the routine work on the appropriation bills little important legislation was considered by the Houses prior to the development of the Cuban crisis. On December 29 the President approved an act prohibiting American citizens from pelagic sealing in the North Pacific, and forbidding the importation of fur-seal skins taken in those waters. This act was in accordance with the treaty agreement with Russia and Japan, and with the policy pursued in the long negotiations with Great Britain. The currency question was brought before the Senate in January by the silver men, apparently for the purpose of manifesting their hostility to the President's projects. A concurrent resolution was introduced, identical with one adopted by Congress twenty years before, affirming that the bonds of the United States are payable, principal and interest, at the option of the government in standard silver dollars, and that payment in such coins would not violate the public faith or the rights of public creditors. This resolution passed the Senate, January 28, by 47 to 32 — Democrats, Populists, and twelve silver Republicans in the affirmative, one Democrat and thirty-one Republicans in the negative. Three days later the House took up the resolution and promptly rejected it by 182 to 132. Restriction of immigration also was acted upon in the Senate. A bill, similar to the one vetoed by Mr. Cleveland (see RECORD for June, 1897), was passed by that body, January 17, excluding aliens over sixteen who are not able to read or write the English or some other language. No action had been taken by the House up to the close of this RECORD. — In connection with the Cuban crisis **war legislation** included the following acts: Increasing the army by two regiments of artillery, March 7; authorizing the President to prohibit the export of coal or other war material by sea, April 21; creating a volunteer army for times of actual or imminent war and providing for its organization, April 22; reorganizing the regular army so as to introduce the three-battalion system and to increase the army on war footing from 27,000 to 61,000 men, April 26; author-

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izing army officers in Cuba to furnish subsistence to destitute Cubans, and to supply the insurgents with arms and ammunition, May 10. All the foregoing bills were passed by practically unanimous votes in both houses. On the 23d Mr. Dingley introduced the bill to provide a war revenue. It greatly increased the taxes on beer and tobacco, imposed stamp taxes on all kinds of business documents, on telegrams, and on proprietary drugs and similar articles, greatly increased the tax on tonnage, and finally authorized the issue of 10–20 three per cent coin bonds up to $500,000,000, and of interest-bearing treasury notes up to one million. On this measure party lines were drawn, through the demand of the Democrats that the bond issue should be omitted and an income tax inserted. No obstruction was resorted to, however, in the House, and the measure passed, April 29, by 181 to 131, six Democrats for and two Republicans against it. The finance committee of the Senate, to whom the bill was next referred, at once began to remodel it to conform to the ideas of the silver men. The influence of the war was manifested clearly in the Naval Appropriation Act, which passed its final stages May 2. After successive increases in the number originally proposed, the act eventually provided for three new battleships, four new harbor-defense monitors, twelve torpedo boats and sixteen torpedo-boat destroyers.

THE FEDERAL JUDICIARY. — Among the important decisions of the Supreme Court have been the following: Holden *vs.* Hardy, February 28; held, that the Utah statute forbidding the employment of workingmen for more than eight hours per day in mining, smelting and refining, is within the police power of the state, and does not conflict with the Fourteenth Amendment. Smyth *et al. vs.* Ames *et al.* (Nebraska Maximum Freight Rate Case), March 7; held, that the question whether railroad rates established by state law are so low as to deprive the carrier of property without compensation, is a matter for judicial inquiry, and that the Nebraska law, having fixed maximum rates under which the business would be carried on at a loss, is in conflict with the Fourteenth Amendment and hence invalid. United States *vs.* Wong Kim Ark, March 28; held, that a child born in the United States, of Chinese parents, domiciled and in permanent business in the country, becomes at birth a citizen of the United States. — Under the Anti-Trust Act of 1890 the circuit court of appeals in Tennessee decided, February 8, that the Addyston Pipe and Steel Co., a combination of iron-pipe manufacturers, was unlawful. The circuit court in California, decided, January 28, that an association of coal dealers fell in the same category.

STATE LEGISLATION. — **Constitutional changes** have been acted upon as follows: In New York the legislature adopted, for submission to the next legislature and to the people, a proposition providing for biennial sessions of the legislature. In Iowa a proposition looking to biennial elections of state officers was passed by the legislature, and in Mississippi one providing for an elective judiciary. The clause of the Wyoming constitu-

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tion which declares that no foreign-born citizen shall vote unless able to read the constitution, was interpreted by the state supreme court to mean that the constitution must be read in English. In Rhode Island a commission reported to the legislature a draft of a total revision of the constitution, establishing, among other things, an intelligence qualification (ability to read and write in English) for admittance to citizenship, and substituting biennial for annual elections. In Louisiana an election, January 11, on the question of holding a constitutional convention resulted in favor of the affirmative. The convention accomplished its chief purpose by the adoption, in March, of a suffrage clause, designed to exclude the negroes from the franchise. The leading provisions of the clause are as follows: The right to vote is given to all who can prove their ability to read and write, in either English or their mother tongue, by making written application for registration in the presence of the proper officials, and also to those who, though unable to fulfil the above requirement, own property assessed at not less than $300; moreover, without either of the foregoing qualifications, persons who could vote prior to January 1, 1867, together with their sons and grandsons above the age of twenty-one, are entitled to vote. Provision is also made for the submission of certain questions to the taxpayers alone, in which case the educational qualification is inoperative, and women also may vote. The new provisions are to go into effect December 31, 1898. — Legislation designed to regulate party primaries and restrain the influence exerted therein by the so-called "bosses" and "machines" has been enacted in Illinois and New York. The act of March 29, in the latter state, subjects enrollments and primary elections to the supervision of the state election officials, under regulations designed to insure the same freedom of action to the individual that is insured in the final registration and voting. The Illinois act, passed February 10, is less radical in the matter of enrollments, but establishes a strong official control over primaries. — In Kentucky the mob violence against tollgates, which has prevailed for several years, continued to manifest itself during the winter. The governor strove earnestly to maintain order by the militia; but the disturbances were very widespread, the public sentiment of the rural districts was either overawed by the rioters or inherently favorable to them, and the legislature, politically hostile to the governor, seemed not averse to hampering his policy. An act was passed, over his veto, putting the expense of troops used against mobs upon the corporations whose property is protected. — The agitation against department stores (see RECORD for June, 1897, p. 363) in Western cities has continued in a variety of forms. In Chicago the opponents of the large stores secured the enactment of city ordinances prohibiting the sale of meats and provisions or of wines and liquors in the same establishment in which dry goods were sold. The large concerns, however, found legal means to thwart the purpose of the enactments. More recently the retailers have concerted plans for establishing a coöperative store, for the express purpose of com-

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peting with the large concerns by their own methods. — In consequence of the long-standing friction between the state authorities of Kansas and insurance companies of other states, several of the large Eastern companies formally withdrew, at the beginning of the year, from the transaction of business in Kansas. Projects are understood to be on foot in the state for the organization of insurance business under state auspices.

LYNCH LAW. — The incidents under this head that have come to the notice of the compiler are thirty-one in number, exclusive of the Lake City murder, noticed below. Of the thirty-one, twenty-three were in the South, — the victims all being black; and eight were in the Northwest — North Dakota, Wyoming, Nevada and Washington, the victims all being white. Rape was the alleged offense in eight of the cases at the South, but in none at the North. At Lake City, S. C., on February 22, various manifestations of ill-feeling by the whites at the appointment of a negro postmaster for the village culminated in an atrocious crime. Late at night a party of white men surrounded and set fire to the negro's home. As he and his family attempted to escape the flames, the whites opened fire with guns, with the result that the postmaster and his baby were instantly killed, and his wife and three other children were seriously wounded. The national authorities instituted an investigation of the affair, and on March 4 offered a reward for the conviction of the murderers. The state authorities also displayed great activity in proceedings for the detection and punishment of the guilty. The incident was an extreme development of a feeling that has been made apparent in many parts of the South since the advent of the McKinley administration. Federal offices have been given to negroes in a large number of cases, and protests and friction have been general on the part of the whites, but without effect. — Extraordinary precautions by the Southern state officials for the prevention of lynching have been characteristic of the period. In North Carolina and in Texas the respective governors have freely employed the militia to protect negroes under arrest on charges of assault. The governors of Maryland and Virginia strongly recommended to their respective legislatures the enactment of laws imposing heavy pecuniary responsibility upon any county in which a lynching may occur. — In Indiana the governor has carried on a persistent policy of bringing to justice those concerned in the lynching at Versailles last September (see last RECORD). Neighborhood sympathy with the criminals has thus far proved sufficient to shield them, and two successive grand juries have refused to indict any one.

II. FOREIGN NATIONS.

EUROPEAN INTERNATIONAL RELATIONS. — The most important incidents in this field have been connected with events in the Orient and in Africa, described below. In Europe proper **the Cretan question** has been the only matter of importance, but practically no advance has been

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made toward its settlement. The candidature of Colonel Schaeffer for the governorship of autonomous Crete proved by the middle of November incapable of winning general consent. During the winter Russia proposed and pressed with some show of warmth the name of Prince George of Greece for the position; this project encountered the opposition of Germany, Austria and the Porte. As to the details of the proposed governmental organization for the islands, no agreement whatever has resulted from the discussions by the powers. Meanwhile the maintenance of order has continued to occupy the attention of the naval forces of the powers. Germany and Austria, however, withdrew their forces in March and April respectively, leaving affairs to France, Russia, Great Britain and Italy. — The final treaty of **peace between Greece and Turkey** was signed December 4, and was promptly ratified by the Greek Parliament. In March a loan for the payment of the indemnity was secured for Greece by the mediation and under the guaranty of Great Britain, France and Russia; and on April 2 the final legislation for the establishment of the great powers in control of the Greek financial administration was enacted at Athens. Late in the winter Russia demanded of the Porte that a substantial fraction of the war indemnity received from Greece should be applied to making up the arrears of the indemnity due to Russia for the war of 1877–78. The final settlement of this matter had not been reached at the close of this RECORD.

GREAT BRITAIN AND IRELAND. — Prior to the assembling of Parliament the general interest of all classes was centered in the progress of **the engineering strike** (see last RECORD). The contest proved most obstinate between the thoroughly well-organized trade unions and the employers' federation. A proposition of the latter looking to settlement was, when submitted to vote of the workmen in December, almost unanimously rejected. But the strain upon the resources of the unions became intolerable; some $180,000 weekly was paid to the strikers, while the outside contributions, though large, fell far short of such a sum. In January the cause of the men was manifestly hopeless, and another vote resulted in a majority for acceptance of the employers' terms. On the 28th the order went forth for the men to resume work. The result involved the withdrawal of the unions' demand for a 48-hours week, and the acceptance of the rules insisted on by the employers to insure themselves a free hand as to the management of the shops and the *personnel* of their employees. — **Parliament** assembled February 8. The chief legislative measures proposed in the Queen's speech were: Relief for the industries of the West Indian colonies, which were reported to be suffering from severe depression; a new system of local government for Ireland; and an increase in the strength and efficiency of the army. Of these measures the Irish Local Government Bill alone made marked progress before the end of this RECORD. The bill was introduced February 21. Its essential provisions were as follows: In the place of the existing nominated bodies, popularly elected bodies were established to carry on local government — county councils, urban and rural district councils, and boards of guardians. These

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bodies were to be chosen by the electors qualified to vote for members of Parliament, with the addition of peers and women; and eligibility to membership was made practically the same as in England, except that ministers of religion were ineligible. Only the fiscal and administrative duties of the old county organs were transferred to the new; judicial business was given over to the county courts. As to taxation and finance, the salient provision in the complicated readjustment was that under which the imperial treasury was to contribute to the localities annually a fixed sum, equal to one-half the county rate and one-half the poor rate paid by agricultural land in a standard year. This last provision was stigmatized by Irish members as a bribe to the landlords to secure their consent to the bill. The bill as a whole was accepted in principle by all the Irish factions as well as by the Liberals, and it passed its second reading without a division, March 21. The budget statement of Sir Michael Hicks-Beach, presented April 21, declared that the country was increasingly prosperous. The surplus of the past year was £3,678,000, though the total expenditures of the year had been £115,089,000 — the highest point ever reached. For the ensuing year he estimated a surplus of $1,786,000, which would permit some reductions in taxation, chiefly in the excise on tobacco. — A hotly contested election for the London County Council, March 3, resulted in a triumph for the Progressives, or radical party, who chose 68 members, as against 48 Moderates.

THE BRITISH COLONIES AND INDIA. — The Canadian Parliament met February 3, but its session has not produced striking political legislation. Economic interests of local significance have been the chief topics of consideration. In April the administration announced bills insuring preferential tariff treatment to Great Britain, India, New South Wales and the British West Indies, and providing for a general *plébiscite* on the desirability of prohibitory liquor laws. — In Newfoundland, as the result of an election a week earlier, the Whiteway ministry was succeeded, November 18, by a Conservative cabinet headed by Sir James Winter. The change involved a reversal of the policy of rather extravagant internal improvements that had been carried out by Whiteway. — The movement for **Australian federation** has resulted in the completion of a draft constitution. The convention (see last RECORD) reassembled at Melbourne January 20, Queensland having still failed to overcome the obstacles to sending representatives. On the 17th of March the convention, having finished its work, adjourned *sine die*. The constitution as adopted embodied the following provisions: A federal legislature, bicameral, with members of both houses chosen by popular vote; representation according to population in the lower, and equal for every state in the upper house; money bills to originate in the lower house, but alterations may be suggested and the bill as a whole thrown out by the upper; in case of a deadlock between the houses, a simultaneous dissolution and afterward, if the deadlock continues, a joint session in which a two-thirds majority shall determine the fate of the measure at issue; a

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uniform tariff under federal control, the surplus revenue over necessary expenses to be returned to the states in the proportion that an experience of five years shall show to be just; all powers not delegated to the federal government to be retained by the states. The draft will next be voted upon by the people of the different states, with the provision that an affirmative vote above a fixed minimum in each state shall be necessary in order to ratify. This minimum was raised last year in New South Wales from 50,000 to 80,000 (out of 400,000 adult males) — an action which is thought to have made ratification problematical. The constitution may, if ratified by three states, go into operation for those ratifying. — In **India** the famine disappeared during the winter, and the uprising of the border tribes was finally suppressed. But the third great source of recent trouble, the plague, after a period of subsidence, became virulent again in January in the region of Bombay, and again the sanitary measures of the government caused rioting and bloodshed. At Sinnar, on January 28, and in Bombay itself, March 9, serious resistance to the authorities was only overcome after many lives had been lost. At the beginning of May it was announced that the plague had made its appearance in Calcutta. As a consequence of the incidents at Poona (see last RECORD) the law in reference to sedition was amended by the legislative council in February in the direction of much greater stringency. All but one of the native members of the council opposed the amendment. The budget statement made to the council in March showed a deficit for 1896–97 of 1,700,000 rupees, and an estimated deficit for 1897–98 of 5,280,000 rupees, due chiefly to the famine.

FRANCE. — French political life, otherwise uneventful, has been throughout the period under review considerably affected by the sensational incidents of **the Dreyfus affair and the Zola trial.** In 1895 Dreyfus, a Jewish captain in the French army, was convicted by a court-martial of having sold military secrets to a foreign power, and was sentenced to life imprisonment on a West Indian island. Doubt as to the guilt of Dreyfus was felt and expressed by many persons at the time, but on the other hand anti-Semitic influences were energetically employed to turn public opinion against him. The proceedings of the court-martial were secret and hence the evidence against Dreyfus was not revealed. Last autumn the languishing interest in the affair received a great stimulus from the public avowal of M. Scheurer-Kestner, a vice-president of the Senate and a man of the highest reputation, that he had become aware of facts that were conclusive of the innocence of Dreyfus. On November 16 the brother of Dreyfus formally accused one Esterhazy, an inactive officer, as the true culprit in the affair. Though documents were made public which on their face seriously compromised Esterhazy, he was on January 11 acquitted by a court-martial whose proceedings, as before, were secret. Two days later M. Zola, the well-known novelist, addressed to President Faure a long letter, violently assailing the military authorities and presenting the views of those who believed Dreyfus innocent. The essence of Zola's charge was

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that Dreyfus had been irregularly convicted, and that in order to cover up this fact and prevent a revision of the trial the chief military authorities had deliberately and against the evidence acquitted Esterhazy. The minister of war and a number of officers were accused by name of gross violations of justice. Zola's letter was followed by a period of anti-Semitic demonstrations in many French cities, while in Algiers rioting on January 23–24 resulted in the loss of several lives. In the Chamber of Deputies Premier Méline, in response to interpellations, announced that Dreyfus was undoubtedly guilty, that his case would under no circumstances be reopened, that the agitation about it would be vigorously repressed and that Zola would be prosecuted in the courts for defamation of the army. The Chamber sustained the ministry, January 24, by a vote of 376 to 133. The trial of M. Zola took place February 7–23, and was attended by much popular excitement both within and without the court room. Despite the positive ruling of the court that the Dreyfus affair must not be brought into the trial, and the free recourse to the plea of professional secrecy on the part of officers called to testify, it was pretty clearly brought out that the guilt of Dreyfus had been established by a secret document, communicated to the court-martial, but not to either the accused or his counsel. Zola, however, was convicted on the charge against him and was sentenced to a year in prison. On the following day the Chamber sustained the course of the government by 416 to 41. The prime minister took the ground that the whole episode was due to the emotional excitement of a few persons who desired a revision of the Dreyfus trial, and he insisted that the army officers were quite innocent of the charges that had been made against them. The sequel to the trial was a decision by the Court of Cassation, April 2, declaring the whole procedure null and void, on the ground that the formal complaint should have been made, not by the minister of war, but by the members of the court-martial whom Zola libelled by name. It was at once announced that the officers of the court-martial would institute a new prosecution against Zola, on the basis of his charge that Esterhazy had been acquitted "by order." — The most striking **legislation** of the period was an act, adopted November 12, abolishing the secret examination of persons accused of crime, and assuring the assistance of counsel at the first hearing. Owing to the high price of grain the government, May 3, suspended the duties on wheat till July 1. — The general elections for the Chamber of Deputies took place May 8. Slight Republican gains were reported, but the full results were left dependent upon the second voting, fixed for the 22d.

GERMANY. — The most characteristic feature of German politics has been the development of an aggressive naval and commercial attitude in the Far East. The seizure of Kiao-Chau (see below, p. 385) was the first definite manifestation of this attitude, and the dispatch of a squadron under Prince Henry, the emperor's brother, to the East was made the occasion of an elaborate demonstration of the new policy. At a banquet

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at Kiel, December 15, the day before the ships sailed, the emperor in a farewell address to Prince Henry, dwelt at length on the commercial expansion of Germany, and on her mission in the protection of her merchants and her missionaries. Prince Henry was exhorted, in case of affront or prejudice to German rights, to "strike out with your mailed fist, and, God willing, weave 'round your young brow the laurel wreath"; to which the prince replied that he was only animated by one desire — "to proclaim and preach abroad to all who will hear, as well as to those who will not hear, the gospel of your majesty's consecrated person." — **In the Reichstag,** which assembled November 30, the principal work of the period was the enactment of a law for the increase of the navy. This measure was made the most prominent feature of the government's program, as announced in the imperial speech at the opening of the session; and after long discussion and some modification in committee it passed finally March 28. Provision is made in the act for a gradual increase of the number of vessels up to a fixed maximum, to be reached in six years; and in meeting the expenses of the increase, there is to be no increase of taxation on beer, brandy, tobacco or sugar. Another act bearing on the Oriental development was that establishing subsidized steamer lines to Eastern Asia. Next in importance to the navy bill, in the government's program, was a bill for the long-promised reform in military judicial procedure. The project that came from the Bundesrath provided in a carefully qualified way for the application to the military courts of certain elements of ordinary judicial procedure. Publicity and the right of counsel were recognized, and civilian judges and lawyers were permitted to take part in the proceedings. The committee of the Reichstag demanded still more liberal provisions, which the government opposed, as tending to destroy discipline. Ultimately a compromise measure was adopted by the house May 4. The finances of the empire, as set forth in the treasury's statement of December 10, were very prosperous. A surplus of 20,000,000 marks was shown for 1897. — **The Prussian Landtag** assembled January 11, and began work on a program which included a variety of projects — chiefly of local interest. A bill which was passed in March increased from one to two hundred million marks the fund for settling German proprietors in the Polish districts of Posen and West Prussia. During the past ten years over 2000 Germans have been settled in these regions; but the government stated that the Poles were still gaining in numbers and influence, and that the tendency must be counteracted.

AUSTRIA-HUNGARY. — Cisleithan politics, during the first months of the period under review, were of a very tumultuous character. The net result was the **success of the German opposition to Badeni.** The policy of obstruction pursued by the Germans in the Reichsrath culminated at the end of November in the use of force by the government. On November 24 Dr. Abrahamovitch, who had been chosen president of the assembly, refused the floor to Schönerer, a leading obstructionist, whereupon the

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German and his friends took possession of the tribune and defended it from the attack of the officers of the body and Czechish members who sought to dislodge them. In the fight that ensued several members were badly hurt, and the session was summarily terminated. On the following day, amid German demonstrations so noisy as to render oral proceedings inaudible, the majority and the president, by a previously arranged code of signals, went through the forms of adopting rules of order authorizing the president to exclude disorderly members from the house. At the next session the first proceeding was a rush of enraged Germans upon the president, who was saved from violence only by the entrance of a strong force of police; Schönerer, Wolff and eleven other obstructionists were then forcibly removed from the house. Similar scenes characterized the next meeting of the Reichsrath. Meanwhile these proceedings had stimulated a series of popular demonstrations in Vienna and other predominantly German cities, and considerable use of the troops had to be made to preserve order. The threatening situation was relieved on the 28th by the announcement that Badeni had resigned and that Baron Gautsch von Frankenthurn would become prime minister. The Reichsrath meanwhile was prorogued. The success and exultation of the Germans were quickly followed by riotous demonstrations on the part of the Czechs in Prague and many other Bohemian towns. On the last days of November and on December 1 a widespread and apparently systematic looting of German shops and residences was carried on in Prague. On the 2d the minor state of siege was applied to the city, and with a free use of the troops and of summary courts order was restored. The state of siege was revoked January 10, when the Landtag met. The attitude of the Czech majority in this body resulted in the withdrawal of the Germans from participation in its business. — Premier Gautsch, on taking office at Vienna, at once assumed a conciliatory attitude toward the Germans and directed his energies to carrying through the necessary business of administration, while preparing the way for a permanent new ministry. In January a modification of the language-ordinances was promised, and in March it was put into operation. The new rules classify localities as German, Czech or mixed, and prescribe rules for the official language which vary accordingly. On March 5 a new ministry headed by Count Thun-Hohenstein assumed control. Its members included representatives of both Germans and Czechs, as well as of Poles, and its policy accordingly denoted an abandonment of that of Badeni, in which the Germans were to be ignored. When, on March 21, the Reichsrath reassembled, it was declared by the president that the rules of order which caused the disturbances in November had expired. An attempt by the irreconcilable German obstructionists to insist on some action stamping the rules as unconstitutional found no general support, and normal parliamentary procedure prevailed throughout the session. — At the end of December **the compromise uniting Austria and Hungary** expired, without final legislative action by either country for

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its renewal. Obstruction by the Germans at Vienna and by the extreme Independence (Kossuth) Party at Budapest had prevented the adoption of the necessary bills. Nor indeed had any agreement been reached by the joint commission on the question of the respective quotas of the common finances. The situation was met by administrative action of the two governments through which the provisions of the expired agreement were kept in operation pending action by the respective Parliaments. In the second week of January the Hungarian Parliament succeeded in passing through its final stages a bill extending the old arrangements till the end of 1898 and indemnifying the administration for its illegal procedure. The act provided that if by May 1 an agreement had not been definitely reached and enacted into law by Austria the government should take steps looking to the establishment of a separate customs, currency and financial system for Hungary. No legislative action has yet been secured in Vienna, for the reason that the Germans insist on a prior settlement by law of the language question. — Throughout the period under review there have been widespread **agrarian disturbances** in Hungary. Especially in regions where *latifundia* predominate both laborers and small landholders, inspired by socialistic agitators, have put forth demands looking to a division of estates. A great meeting of agricultural laborers at Budapest, during the Christmas holidays, adopted resolutions calling for an eight-hour day and a variety of other regulations familiar to industrial trade unions, together with certain political reforms, such as universal suffrage, secret ballot, free education and the abolition of the army. It was in view of the prevalent agitation that an act was adopted and promulgated, March 1, modifying considerably the existing law as to agricultural labor.

RUSSIA. — The decree which concluded the transfer of Russia's monetary system from a silver to a gold standard was issued at the end of November. Provision was made for the striking of gold coins, and the paper notes of the currency were made redeemable in gold. — Another great strike of factory operatives, this time in the government of Vladimir, was reported in February. Some 10,000 men quit work. The cause of the difficulty was the failure of the government's new factory regulations to secure to the men the customary number of church holidays.

ITALY. — A cabinet crisis was precipitated shortly after the opening of Parliament, November 30. By a reorganization of the ministry so as to make room for Zanardelli and his friends, Premier di Rudini retained his position. **Questions of finance** constituted the topics of chief interest in the Chamber. Finance-minister Luzzatti's budget statement at the opening of the session showed a surplus and was very optimistic in its tone. But it became manifest during the winter that the burden of taxation upon the masses was near the breaking point. In addition to disturbances of a chronic nature in Sicily **bread riots** occurred in various places on the mainland from February on, and the situation appeared so threatening that part

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of the army reserves were called out. The high price of flour was the special cause of the trouble. Parliament passed an act, February 10, reducing temporarily the customs duty on grain, though without a modification of the *octrois* little relief could be effected by the law. At the end of April riotous proceedings began to occur in the large towns of middle and northern Italy. Early in May Florence was affected and all Tuscany was put under martial law. A climax to the disturbances was reached on May 7–8 when a general uprising of the lower classes at Milan, organized apparently by socialists, led to desperate barricade-fighting in the streets. Large bodies of troops were in action and great loss of life was reported before the rioters were suppressed. — The long-standing charges of corruption against Signor Crispi reached a conclusion in March. Under a decision of the Court of Cassation last November, the sole jurisdiction over the matter was ascribed to the Parliament, acting through impeachment. Thereupon a committee of the Chamber was appointed to investigate. Its report, submitted in March, declared that there was no ground for impeachment, but that Crispi's conduct was politically censurable. This report was adopted March 23, whereupon Crispi resigned and appealed to his constituents for vindication. The charge was, essentially, that he when minister received extensive favors from certain banks, in return for which he used his power to protect them from the consequences of illegal conduct on their part. In April Crispi was reëlected at Palermo by 1175 to 295.

SPAIN AND CUBA. — Spanish politics have centered exclusively in the Cuban situation. The application of **Sagasta's policy in Cuba** was carried out by successive decrees of Governor-General Blanco during November and December. On November 14 permission was given to the *reconcentrados* not only to labor within the zones of cultivation previously established, but also to return, under certain restrictions, to their farms and plantations wherever situated. All the Americans still in prison for filibustering were released and the embargo on exportation of tobacco was raised, so far as that owned by Americans was concerned. On the 27th of November the royal decrees establishing autonomy for Cuba and Porto Rico were published at Madrid. The new system included the following features in organization: A governor-general appointed by the crown; a cabinet of five secretaries appointed and removed by the governor-general; a bicameral legislature, of which one house was to be chosen by popular election and the other to be half elective for five years and half appointed for life; and a system of provincial and municipal assemblies for local government. As to powers, the most striking feature was the elaborate provisions by which the control of the home government over the colony was safeguarded. No bill which in the opinion of the governor-general affected the national interests was to be debated till it had been referred to Madrid; all the guaranties of the constitution could be suspended by him in emergency; the power of the legislature over the customs tariff was greatly qualified in

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favor of Spanish interests; and the ultimate decision of any question between governor-general and the Cuban Parliament was to be decided by the supreme court in Spain. On January 1 the new system was inaugurated by the installation of a cabinet headed by Señor José Galvez. The members were all from the Autonomist and Reformist parties, and with one exception were native Cubans. The Conservative or Union Constitutional Party in Cuba bitterly denounced the scheme of autonomy, adopted resolutions approving Weyler's policy and resolved to refrain from participation in politics while the new system lasted. On January 12–18 Havana was the scene of riotous demonstrations by the opponents of autonomy, including many of the Spanish volunteers. The regular army remained faithful, however, and the riots were suppressed without serious damage. — The **attitude of the insurgents** toward autonomy was promptly announced by their leaders in November to be that of absolute rejection. They reiterated their resolution to have nothing less than independence. Efforts were made by the Blanco administration in the autumn to enter into negotiations with insurgent military chiefs for their submission to the autonomous *régime*. Generals Gomez and Garcia in November ordered that any Spanish envoy attempting to propose to a Cuban officer acceptance of autonomy should be treated as a spy. Under this order a prominent Spanish officer, Colonel Ruiz, was summarily executed by the Cubans near Havana. No military movements of significance were undertaken by the insurgents during the winter; and the few demonstrations made by the Spaniards, being met by the usual guerrilla methods of the rebels, were fruitless. Early in May the Spanish garrisons in the eastern provinces of Cuba were concentrated in four of the largest towns, and the many posts that were abandoned were at once occupied by the insurgents. — With the development of the tension with the United States (*supra*, p. 366) all governmental activity both in Spain and in Cuba was directed to **preparations for war**. Elections for the Cortes were held March 27, and resulted in the customary ministerial majority — 300 Liberals and about 100 opposition members being returned. On April 14, in view of President McKinley's message, the Cortes was convoked for the 20th and a national subscription was decreed for the increase of the fleet. The Carlist pretender just before this issued a manifesto threatening revolution if the government at Madrid did not resist the pretensions of the United States, while the Republican agitators in a number of the large cities instituted demonstrations against the American consulates. When the Cortes assembled the speech of the Queen Regent represented the Cuban complication as due to a "section of the people of the United States," animated by the purpose of overthrowing Spanish sovereignty in the island, and declared that, if the American government yielded to the influence of this section, Spain would sever relations to protect her national dignity. It was declared to be the Regent's resolution to defend her son's throne till he was old enough to defend it himself, and to rely on the people to maintain the honor and terri-

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tory of the nation. In May, however, the general conditions in Spain became very critical. After the disaster at Manila (see above, p. 369) Republican and Carlist demonstrations against the government led to the proclamation of martial law in Madrid and other cities, and many country districts were disturbed by popular tumults. The latter were due in some measure to the dearness of bread; and accordingly a law was hurried through the Cortes prohibiting the exportation of wheat, flour, potatoes and other food, and import duties on wheat were reduced. Meanwhile the autonomist cabinet of Cuba sent offers of unconditional assistance to the home government. General Blanco proclaimed the armistice which had been ordered to conciliate the United States, but received no indication that the insurgents accepted it. When war had definitely begun, the armistice was revoked, martial law was declared, and the whole energy of the authorities was devoted to measures of defense against the United States. The autonomous parliament met at Havana May 4.

MINOR EUROPEAN STATES. — The commission on the union of **Norway and Sweden** (see this RECORD for June, 1896, p. 393) concluded in January that no agreement on any plan was possible. In March the reports of the Swedish and Norwegian delegates, laid before their respective Parliaments, revealed that the Swedes had insisted on a single foreign department and consular system, while the Norwegians had clung to the demand for an independent consular system for Norway. The elections for the Norwegian Storthing finally resulted in November in the return of 79 Radicals and 35 others. In consequence a Radical ministry headed by Steen displaced the Hagerup cabinet in February. — A referendum in **Switzerland**, February 20, on the act for state purchase of the principal railroad lines resulted in approval of the law by 384,146 to 177,130. The great interest in the subject was indicated by the fact that the total number of qualified voters is only 670,000, and that so large a proportion actually voting had never been known on a referendum. — In **the Balkan States**, Bulgaria was disturbed from February to April by commotion along the Macedonian frontier, incidental to the long-standing revolutionary agitation in Turkey. The efforts of the Turks to disarm the people who were sympathizers of the movement for Macedonian independence were said to have been accompanied by horrible barbarities, and the Bulgarian government complained earnestly of this at Constantinople. Servia has continued under the *ukase-régime* of her young king, who signalized the opening of the year by postponing the proposed meeting of the Skupshtina, decreeing the budget and placing his father, ex-King Milan, at the head of the active army. This much-hated prince is looked upon by many Servians as the responsible spirit of the existing *régime*, and many indications point to an approaching uprising against him.

THE ORIENT. — The demonstration of Chinese feebleness which was presented by the recent war with Japan, has had its normal results in what appear to be the first steps toward **the partition of China** among the great

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powers of Europe. The process was definitely inaugurated by Germany. On November 14, under guise of securing satisfaction for the murder of two missionaries, a German naval force occupied the harbor and city of Kiao-Chau, in the province of Shantung, on the west shore of the Yellow Sea. After a period of negotiation, during which, in the middle of December, Prince Henry of Prussia was dispatched with a strong reinforcement to the German fleet in Chinese waters, it was announced on January 5 that a lease of the seized port had been secured by Germany. The lease was for ninety-nine years, and the region affected included the bay, with the city and a surrounding tract of from thirty to fifty square kilometres, while important concessions as to the commercial and industrial exploitation of the adjacent lands were also assured to Germany. Baron von Bülow, the foreign minister, declared in the Reichstag, February 9, that the seizure of the port was a deliberate act of policy, looking to the possession of a naval base for the support of Germany's commercial interests in the Far East, and aimed to secure her a position analogous to that of Great Britain at Hong Kong, France at Tonquin and Russia in Manchuria. In the middle of December it was announced that a Russian fleet had taken possession of Port Arthur, at the mouth of the Gulf of Pechili. The news caused strong manifestations of hostility in Great Britain and was followed by a period of strenuous diplomacy centering at Pekin. The upshot was a convention, signed March 27, by which Port Arthur and the port of Talien-wan, with adjacent territory, were "ceded to Russia in usufruct by China" for twenty-five years, with privilege of extension of the time. Russian forces at once occupied the ports. Great Britain had opposed this action by Russia on the same grounds on which Russia had in 1895 objected to the occupation of Port Arthur by Japan, namely, that it would menace the existence of China. When, however, the Russo-Chinese convention was concluded, an offset was at once secured through an agreement by which the port of Wei-hai-wei, on the opposite side of the entrance to the Gulf of Pechili, should be ceded to Great Britain on the same terms as those on which Russia obtained Port Arthur. Additional concessions to British demands were also announced as follows: The whole region of the Yang-tse-Kiang not to be ceded or leased to any foreign power; the director of the Chinese customs administration to be, as heretofore, an Englishman; access to inland waters to be allowed to ships of all nations; and three new treaty ports to be opened, namely, Fu-ning, Yo-chau and Chin-wang. From Germany and Russia Great Britain secured assurances that Kiao-chau and Talien-wan (though not Port Arthur) should be open ports. Immediately after the announcement of the British treaties the demands of France for concessions to her interests on the southern frontier became prominent; and it was announced in the middle of April that she had secured the lease of a bay on the southern coast, a railway concession to connect with her existing system, and a pledge from China not to alienate any of the provinces bordering on Tonquin or to cede Hainan to any other power. — Pending these

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events the government of Japan seems to have preserved a discontented silence. Her forces were still in actual occupation of Wei-hai-wei, which was only to be relinquished upon the payment of an installment of the war indemnity by China in May. A loan to effect this payment was floated, chiefly through the good offices of Great Britain, in March, and the payment was duly made May 7. British occupation of Wei-hai-wei will follow Japanese evacuation. On April 25 an agreement was concluded between Japan and Russia by which each undertook to refrain from direct interference in the internal affairs of Corea and to respond to requests from Corea for assistance or advice only after mutual agreement, while Russia undertook not to impede the development of commercial and industrial relations between Japan and Corea. The internal politics of Japan presented the usual ministerial instability. At the meeting of the Diet in December the inability of the Matsukata cabinet to command a majority became at once evident, and the Diet was dissolved. Shortly afterward the cabinet also resigned, and was succeeded by one headed by the Marquis Ito.

AFRICA. — The advance on Khartoum has progressed with unbroken success. In January three battalions of British troops from the occupying force at Cairo and Alexandria were sent to reinforce the expedition. Prior to this a strong Anglo-Egyptian detachment had taken over Kassala from the Italians and opened communication with the troops on the Nile. In March a large Dervish force took position on the Atbara River, an affluent of the Nile, and constructed elaborate entrenchments. General Kitchener, of the Nile column, moved out from Berber with some 13,000 men and on April 8 stormed the Dervish position, routed the enemy and captured the commander, Mahmoud. By this victory the way was cleared to well within a hundred miles of Khartoum. — In **Uganda**, a thousand miles to the southward, an expedition from the British East Africa region was prevented from reaching the Nile by the mutiny of the Soudanese troops who constituted the bulk of the garrison of the country. The mutineers were a part of Emin Pasha's old Egyptian army, who, after the triumph of the Mahdi, had gone southward and entered the British service. At latest accounts the mutineers had not been subdued, but were seriously threatening the security of British interests in Uganda and the neighboring countries. — The British treaty with Abyssinia (see last RECORD) was made public in February. It embodies an engagement by Menelik to prevent the passage of arms and ammunition to the Mahdists, whom he declares to be enemies of his empire. — Negotiations between Great Britain and France for the adjustment of territorial relations in **the Niger region**, which began in October, have been accompanied throughout the period under review by reports of much activity by French expeditions from Senegal and Dahomey looking to the occupation of points within the sphere claimed by the British. It has also been reported that an expedition from the French Congo region has reached the Nile at Fasoda, some 350 miles south of Khartoum. — **In the Transvaal** the presidential election in February resulted in the reëlection of President Kruger

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by a large majority. The long-standing dispute due to the claim by the supreme court of a right to declare acts of the Volksraad unconstitutional (see RECORD for June, 1897, p. 378) resulted in February in the summary removal of the chief-justice by President Kruger and the appointment of a more subservient jurist in his place. — At the election of directors of the British South Africa Company at London in April, Cecil Rhodes and Alfred Beit, who were so largely involved in the Jameson raid on the Transvaal, were chosen, with the consent of the British government.

LATIN AMERICA. — Brazilian politics have exhibited features that tend to discredit the republican *régime*. The bitterness of internecine strife among the republican factions has proved a source of continual disturbance. On November 5 an attempt was made to assassinate President Prudente de Moraes, and in defending him the minister of war was killed. Martial law was declared by Congress; and an investigating committee reported in January that the affair was the outcome of a conspiracy in which were implicated the vice-president, several members of Congress and a number of army and navy officers. The general elections on March 1 resulted in the choice of Gen. Campos Salles, of Sao Paulo, as president. — In **Venezuela** the formal resumption of diplomatic relations with Great Britain took place through the reception of the British minister, December 11. In February General Ignacio Andrade regularly succeeded Crespo as president. Two months later Crespo was killed while conducting a campaign against a body of insurgents who had been opposing the government through the winter. — In **Central America** the arbitrary career of Barrios, President of Guatemala, was cut short early in February by assassination. The executive power was assumed by Señor Cabreda, a member of Barrios's cabinet. A good deal of friction between Nicaragua and Costa Rica seemed likely in the spring to result in hostilities.

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